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THE WORKS OF THAT GRAVE and LEARNED LAWYER Iudge Ienkins,

Priſoner in *Newgate*.

UPON

Divers STATUTES,

Concerning, the *Liberty*, and *Freedome* of the *Subject*.

With a perfect Table thereto annexed.

Plebs ſine Lege ruit.

LONDON,

Printed for *M. Walbanck*, and *J. Gyles*.

MDCXLVIII.

The Law of the Land.

THE Law of the Land hath for its ground;

1. Cuſtome.
2. Iudiciall Records.
3. Acts of Parliament.

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The Kings Prerogative, and the Subjects Liberty, are determined and bounded by the Law. *p.* 131.

The King claimes no power but by the law of the land. *p.* 131.

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Treaſon.

In the Reigne of Ed. 2. the *Spencers*, the Father and the Sonne to cover their Treaſon, hatched in their hearts, invented this damnable and damned opinion, that Homage, and Oath of Allegiance, was more by reaſon of the Kings Crowne (that is his Politique Capacity) than by reaſon of his perſon; upon which opinion they inferred three execrable and deteſtable Conſequences.

Firſt, if the King do not demeane himſelfe, by reaſon, in the right of his Crowne, his Leidges are bound by Oath to remove the King.

Secondly, ſeeing the King could not be reformed by ſuite of Law, that ought to be done *per aſſerte*, that is by force.

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A Body Corporate cannot commit Treaſon but the perſons can. *p.* 18.

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Treaſon how punished by the Law. *p.* 42.

Treaſon do never produce fatall deſtruction to the Offender, and never attaines to the deſired end: and there are two incidents inſeparable thereunto. *p.* 135.

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A Parliament.

THe word Parliament cometh from the French word *Parler*, to Treat. *p.* 81.

The King is *Principium, Caput, & Finis*, Parl. *p.* 26. 48. 122.

The King aſſembles the Parliament by his Writ, Adjournes, Prorogues, and diſſolves the Parliament, by the Law, at his pleaſure. *p.* 57.

The Writ whereby the King aſſembled the two Houſes, which is called the Writ of Summons, at all times, and at this Parliament uſed, and which is the warrant, ground, and foundation of their meeting, is, for the Lords of the Houſe of Peeres, to Conſult and Treat with the King (that is the *Parler*) of great Concernments, touching;

1. The King.
2. The defence of this Kingdome.
3. The defence of the Church of England. *p.* 24. 34. *p.* 25. 81. 120, 121.

Counſell is not command, Counſellors are not Commanders. *p.* 26.

The Writ of ſummoning the Judges, Counſell of Law, and 12. Maſters of Chancery, is to appeare, and attend the Parliament, to give Counſell. *p.* 116.

The Writ of ſummoning the Commons, is, to doe, and to conſent to ſuch things, which ſhall happen to bee ordained by Common Counſell

Counſell there (*viz.*) in the Parliament, *p.* 25.26.115.

The Parliament is a Corporation compoſed of the King the head, and the Lords and Commons, the Subject body. *p.* 5. l. 22. *p.* 19.20.49. 50.80.122.141.145.146.

And it hath power over our Lives, Liberyes, Lawes, and Goods *p.* 118.

The Court of Parliament is onely in the Houſe of Lords, where the King ſits in perſon. *p.* 116.122.144.

The Office of the Lords, is to Counſell the King in time of Peace, and to defend him in time of War. *p.* 116.142.

It belongs to the Houſe of Lords, to reforme erroneous Iudgements given in the Kings Bench, to redreſſe the delayes of Courts of Iuſtice, to receive all Petitions, to adviſe his Majeſty with their Counſell, to have their Votes in Voting, or abrogating of Laws, and to propoſe for the Common good, what they conceive meet. *p.* 33.

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Briberies, Extortions, Monopolyes, ought to be enquired after by the Houſe of Commons, and complayned of to the King and Lords. *p.* 114.

It belongs to the Houſe of Commons to repreſent the Grievances of the Countrey, to grant Aydes for the King, upon all fit occaſions extraordinary, to aſſent to the making, or abrogating Lawes. *p.* 33. 115, 116, 117, 118.

Becauſe making of new, and abrogating old Lawes, both induce Novelties, and becauſe Bils in both Houſes may paſſe, but by one or two voices, or very few, and perhaps of no Judicious men (who oftentimes carry it by making the Major part, which involves the conſent of all) therefore the Law makes the King aſſiſted therein, by a great number of Grave, Learned, and Prudent men, the Iudge of thoſe Bils, whether they be neceſſary for the Publique Good, or no. *p.* 32. 33. 53. 57. 123.

And the King, upon all Bills, hath liberty of aſſenting or diſſenting. *p.* 18. 28. 39. 51.

And in caſe of the Kings Minority, the Protector hath his liberty, and negative voice, in reſpect of the King. *p.* 52.

The ſtyles of the Acts printed from 9. *Hen.* 3. to 2 *Hen.* 7. were either the King Ordaines at his Parliament, &c. Or, the King Ordaineth by the advice of his Prelates and Ba-

rons, and at the humble petition of the Commons, &c.

In *Hen.* 7. time the style was altered, and hath so continned to this day. *p.* 24. 71.

No Act of Parliament bindes the Subject, without the assent of the King. *p.* 71. 72.

When an Act of Parliament is against Common Right, or Reason, or repugnant or impossible to be performed, the Common Law shall controle it, and adjudge it to be voyd. And such is an Act for a perpetuall Parliament *p.* 139.

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There is no Session, till a prorogation, or dissolution of the Parliament. *p.* 137

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The two Houses ought not to meddle with the Kings Revenue. *p.* 11.

Armes are not to be borne in *London*, or *Westminster* in time of Parliament. *p.* 8. 39.

The Privilege of Parliament protects no

man

man in caſe of Treaſon or Felony. *p.* 15. 16 78.

Parliaments are as the times are: if a turbulent Faction prevailes, the Parliament are wicked, if the times bee ſober, modeſt, prudent, and not biaſſed, the Parliament are right, good, honourable, and good Medicines and Salves. *p.* 41. 42.

The preſent Parliament.

THis Parliament beganne 3. *Novemb.* 1640. and in the beginning thereof the King acquitted the Ship-Money, Knighthood-Money, ſeven Courts of Juſtice contemned no Triennall parliament, ſetled the Forreſt Bounds, tooke away the Clarke of the Market, of the Houſhold, ruled the Houſes with the Navy, paſſed an Act not to diſſolve this parliament without the Houſes aſſent: No people in the world ſo free, if they could have been content with Lawes, Oathes, and Reaſon, and nothing more could, nor can bee deviſed to ſerve us, neither hath been in any time before. *p.* 34.

Notwithſtanding all this (*Jan.* 10. 1641.) the King was driven away from *London*, by frequent Tumults, and 2. thirds, and more of the Lords had deſerted that Houſe, for the ſame cauſe, and the Speaker of the Houſe of Commons, left that Houſe alſo for the ſame

ſame reaſon: New men choſen in their places, againſt Law, by the pretended Warrant of a counterfeit Seale, and in the Kings name, againſt his conſent, leavying War againſt Him, and ſeiſing his Forts, Ports, Magazins, and Revenue, and converting them to his deſtruction, and the ſubverſion of the Law, and Laud, laying Taxes on the people, never heard of before in this Land, deviſing new Oathes to oppoſe the Forces raiſed by the King, *&c. p.* 35.

From the 3. *Novemb.* 1640. unto *Jan.* 10. 1641. they had time to perſecute all evil Counſellors and Judges. *p.* 174.

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The 2 Houſes do not now Act by the Kings Writ, but contrarie to it, *pag.* 121. And ſo their Acts are Null, *p.* 122. 141.

The Act for continuing this parliament, ſo long as both Houſes pleaſe, is void, becauſe it is:

1. Againſt Common right; for thereby the parliament men will not pay their debts: And they

They may doe wrong to other men, *Impune*: beſides the utter deſtruction of all mens actions, who have to doe with Parliament men, by the Statute of Limitation. 21. *Jacob.*

2. Againſt common reaſon, for parliaments were made to redreſſe publique Grievances, not to make them.

3. Impoſſible, the Death of his Majeſty (whom God long preſerve) diſſolving it neceſſarily.

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The end of continuing this parliament was to raiſe Credit for Mony; for three purpoſes: And the three ends of the Act being determined, it agreeth with Law, and Reaſon, the Act ſhould end *p* 141.

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Certaine

Certaine Erroneus Positions and Proceedings of both Houses of Parliament discovered and confuted.

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God ſave the King.

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It is honourable to dye for the Laws. 202.
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God save the King.

To the Honorable Societies of *Grayes-Inne*, and of the reſt of the Innes of Court, and to all the Profeſſors of the Law.

I Have now ſpent Forty five yeares in the Study of the Lawe of this Land being my profeſſion, under, and by the conduct of which Lawes this common-wealth hath flouriſhed for ſome ages paſt in great ſplendor and happineſſe (jam ſeges eſt ubi Troja fuit.) *The great and full body of this Kingdome hath of late yeeres fallen into an extreame ſickneſſe; it is truely ſaid that the cauſe of the diſeaſe being knowne, the diſeaſe is eaſily cured. There is none of you I hope, but doth heartily wiſh*

the recovery of our common parent, our native countrey (Moribus antiquis stat res Britannica.) *I call God to witnes that this discourse of mine hath no other end then my wishes of the common good: how farre I have been from Ambition, my life past, and your owne knowledge of me, can abundantly informe you: and many of you well know, that I ever detested the ship-mony and monopolies, and that in the beginning of this Parliament, for opposing the excesses of one of the Bishopes, I lay under three Excommunications, & the Examination of seventy seven Articles in the high Commission Court. His sacred Majesty: (God is my witnes) made mee a Judg in the parts of Wales against my will, and all the meanes I was able to make; and a patent for my place was sent me, for the which I have not paid one farthing, and the place is of so inconsiderable a*

benefit

benefit that it is worth but 80.l. per Annum when paid, and it coſt me every yeare I ſerved twice as much out of my owne eſtate in the way of an ordinary and frugall expence. That which gave mee comfort was that I knew well that his Majeſty was a juſt and a prudent Prince.

In the time of the Attourney ſhips of Maſter Noy and the Lord Banks, they were pleaſed to make often uſe of me, and many references concerning ſuits at Court upon that occaſion came to my knowledge; and as I ſhall anſwer to God upon my laſt account this is truth, that all or moſt of the references which I have ſeene in that kind (and I have ſeen many) were to this effect, that his Majeſty would be informed by his Counſell if the ſuits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would paſſe them. [what could

a juſt and pious Prince do more?
Gentlemen: you ſhall find the cauſe and the Cure of the preſent great diſtemper in this diſcourſe, and God proſper it in your hands, thoughts, and words, as the caſe deſerves.

Hold to the Lawes, this great body recovers: forſake them, it will certainely periſh. I have reſolved to tender my ſelfe a Sacrifice for them as cheerfully, and I hope (by Gods aſſiſtance) as conſtantly as old Eleazer *did for the holy Lawes of his Nation.*

Your Well-wiſher

DAVID JENKINS.

Now Priſoner in the Tower.

LEX

LEX TERRÆ.

THE Law of this Land hath three grounds. First, **Customs**. Secondly, **Judicial Records**. Thirdly, **Acts of Parliament**. The two latter are but declarations of the **Common Law** and **Customs** of the Realme, touching **Royall Government**. And this Law of **Royall Government** is a **Law Fundamentall**.

The Government of this Kingdome by a **Royall Soveraigne**, hath beene as ancient as history is, or the memoriall of any time; what power this **Soveraignty** alwayes had and used in warre and peace in this land, is th' scope of this discourse; That **Usage** so Practised makes therein a **Fundamentall Law**, and the **Common Law** of the Land is common **Usage**, Plowdens Commentaries 195. For the first of our Kings since the Norman conquest, the first **William**, second **William**, **Henry** the first,

The kings prerogative is a principal part of the common Law. *Com. Litt.* 344. 27 *Hen.* 8. *Stamford prer. fol.* 11 2 *Pars instit. fol.* 496. 3 *Pars instit. pag* 84.

firſt, **Stephen**, **Henry** the ſecond, and **Richard** the firſt, the Cuſtomes of the Realme touching **Regall Government**, were never queſtioned: The ſaid Kings injoyed them in a full meaſure. In King **Johns** time the Nobles and Commons of the Realme conceiving that the ancient Cuſtomes and Rights were violated, and thereupon preſſing the ſaid King to allow them in the ſeventeenth of King **John**, the ſaid Liberties were by King **John** allowed, and by his Sonne **Henry** the third, after in the ninth yeere of his Raigne confirmed, and are called *Magna Charta*, and *Charta de Foreſta*, declared foure hundred twenty two yeeres ſithence by the ſaid Charters.

Now reſts to be conſidered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Cuſtomes (and the fundamentall Rights of the King as **Soveraigne** are no other.) How the Rights of **Soveraignty** continued in practiſe from **Henry** the thirds time untill this preſent Parliament of the third of November, 1640. for before **Henry** the thirds time, the **Soveraignty** had a very full Power.

Rix

Rex habet Poteſtatem & juriſdictionem ſuper omnes qui in Regno ſuo ſunt, ea quæ ſunt juriſdictionis & pacis ad nullum pertinent niſi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat: This proves where the ſupreame Power is. *Bracton temp. H 3 l. 4 cap. 24. Sect. 1*

A Delinquent is he who adheers to the Kings Enemies *Com. Sur. Littl.* 261. This ſhewes who are Delinquents.

Omnis ſub Rege, & ipſe ſub nullo niſi tantum Deo, non eſt inferior ſibi Subjectis, non parem habet in Regno ſuo: This ſhews where the ſupreame power is. *Sect. 5. Brack ibid.*

Rex non habet ſuperiorem niſi Deum, ſatis habet ad pœnam quod Deum expectat ultorem. This ſhewes where the ſupreame power is. *Bracton. l. 3. tract. 3. de delicti, cap. 3, Bracton. l. 3. cap. 9.*

Treaſons, Fellonies, and other Pleas of the Crowne, are *propria cauſa Regis*: This ſhewes the ſame power.

By theſe paſſages it doth appeare

what the Cuſtome was for the power of **Soveraignty** before that time, the power of the Militia, of coyning of Money, of making Leagues with forreigne Princes, the power of pardoning, of making of Officers, &c. All Kings had them, the ſaid Powers have no beginning.

Sexto Edw. 1. Com. Sur. Litl. 85. Lege Homage, every Subject owes to the King (*viz*) Faith *de Membro*, *de vita*, *de terreno Honore*, the forme of the Oath, *inter vetera ſtatuta* is ſet downe; We read of no ſuch, or any Homage made to the two Houſes but frequently of ſuch made by them.

Edward. 2.

It is declared by the Prelates, Earls, Barons, and Commonalty of the Realme, that it belongeth to the King and his Royall Segniory, ſtraitly to defend force of Armour, and all other force againſt the Kings peace, at all times when it ſhall pleaſe him, and to puniſh them that ſhall doe contrary according to the Law and Uſage of the Realme, and heereunto they are bound to ayd their Soveraigne Lord, at all ſeaſons when neede ſhall be. Heere the ſupreame power in the time of Parliament, by both Houſes is declared to belong to the King.

7. Ed. 1. ſtatus at large fol. 42.

At

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be borne in London, Weſtminſter, or the Subburbs. This condemnes the multitudes comming to Weſtminſter, and the Guards of armed men. 7. Ed. 2 4. pars inſtit. 14.

All who held by Knights ſervice, and had twenty pounds *per annum*, were diſtraynable *ad Arma militaria ſuſcipienda*: This agrees with the Records of ancient time, continued conſtantly in all Kings times, but at this Parliament 3. November, 1640 The King out of his grace, diſcharged this duty, which proves that the power of warre and preparation thereto, belongs not to the two Houſes but only to the King. 1 Edw. 2 de Militibus.

The two **Spencers** in Edw. 2. time hatched (to cover their Treaſon) this damnable and damned opinion (viz) That Ligeance was more by reaſon of the Kings politick capacity then of his perſon, upon which they inferred theſe execrable and deteſtable conſequences. Firſt, if the King demeaned not himſelfe by reaſon in the right of his Crowne, his Lieges are bound by Oath to remove him. Secondly, ſeeing the King could not be removed by ſuit of Law it was to Edw 3. Calvins Caſe Cook. l. 7 fol. 11.

be done by force. Thirdly, that his Lieges be bound to governe in default of him.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in *Ed.* 2. time; the other by 1. *Edw.* 3. *cap.* 2. All which Articles against the Spencers are confirmed by this laſt Statute, the Articles are extant in the booke called *vetera Statuta.* The ſeparation of the Kings perſon from his power, is the principall Article condemned, and yet all theſe three damnable, deteſtable, and execrable conſequents, are the grounds whereupon this preſent time relies, and the principles whereupon the two houſes found their cauſe.

The Villeine of a Lord, in the preſence of the King cannot be ſeized; for the preſence of the King is a protection for that time to him: This ſhewes what reverence the Law gives to the perſon of a King.

Plowden. com. 322. 27 *aſſ. pl* 49.

33 *Ed.* 3. *eyde de roy,* 103 *Fitz. de M.* 7. 16.

Reges, ſacro oleo uncti ſunt capaces ſpiritualis juriſdictionis: But the two Houſes were never held capable of that power.

Rex eſt perſona mixta cum ſacerdote, habet Eccleſiaſticam & ſpiritualem juriſdictionem: This ſhewes the Kings power in Eccleſiaſticall Cauſes.

The

The Lands of the King is called in Law *Patromonium sacrum*: The Houses should not have meddled with that sacred Patromony. *Com. Sur. Littl Sect, 4.*

The King hath no Peere in his Land, and cannot be judged? Ergo the two Houses are not above him. *3, Ed, 3, 19.*

The Parliament 15. *Ed.* 3. was repealed, for that it was against the Kings Lawes and prerogative. 4 *pars instit. fol.* 52. This shewes cleerely the Propositions sent to Newcastle, ought not to have beene presented to his Majesty, for that they are contrary to the Lawes and his Prerogative.

The Lords and Commons cannot assent in Parliament to any thing that tends to the disinherision of the King and his Crowne, to which they are sworne: This condemnes the said Propositions likewise. *4 Pars, Cooks instit. fol. 14. 42. E. 3.*

To depose the King, to imprison him untill he assent to certaine demands, a warre to alter the Religion established by Law, or any other Law, or to remove Councellors, to hold a Castle or Fort against the King, are offences against that Law declared to be treason by the resolutions herein after mentioned; by that Law men are bound to ayd the King when warre is levied against him in his Parliament Rol. num. 7. *Rex & consuetudo Parliamenti.*

25 Ed. 3. cap. 2. his Realme. King in his Statute muſt be intended in his naturall body and perſon that only can dye; for to compaſſe his death, and declare it by overt Act is declared thereby treaſon; to incounter in fight ſuch as come to ayde the King in his warres, is treaſon.

Compaſſing of the Queens death, of the Kings Eldeſt Sonne, to coyne his money, to counterfeit his Great-Seale, to levy Warre againſt him, to adhere to ſuch as ſhall ſo doe, are declared by that Act to be high treaſon. This Statute cannot referre to the King in his politique capacity, but to his naturall, which is inſeperable from the politick; for a body politick 11 Ed. 4. 4. can have neither Wife, nor Childe, nor levy Warre, nor doe any Act but by the operation of the naturall body: A Corporation or body politick hath no ſoule or life, but is a fiction of the Law, and the Statute meant not fictitious perſons, but the body naturall, conjoyned with the politique, which are inſeperable.

The clauſe in that Act, that no man ſhould ſue for grace, or pardon for any offence condemned or forfeiture given by that Act, was repealed by a ſubſequent Act in 21. R. 2. holden

R. 2. 11. Anno. cap. 13.

den unreaſonable, without example; and againſt the Lawe and cuſtome of the Parliament. This condemnes the Propoſition for diſabling the King to Pardon. 4 *pars inſtit. fol* 42. The Act of 11. R. 2. ſo much urged by the other ſide, was an Act to which the King conſented, and ſo a perfect Act: yet Note the Army then about the Towne: Note that that Law is againſt private perſons, and by the 3. *cap.* therof, the treaſons there declared, are declared to be new treaſons made by that Act, and not to be drawne to example, it was abrogated 21. R. 2. and revived by an uſurper 1. *H.* 4. to pleaſe the people, and by the tenth chap. thereof enacts that nothing ſhall be treaſon but what is declared by 25. *Ed.* 3.

4. *pars inſtit. fol.* 42.

16. *Ed. cap.* 5. 16. *R.* 2. *cap.* 5. *H.* 4.

The Regality of the Crowne of **England**, is immediately ſubject to God and to none other. Plain words, ſhewing where the ſupreame power is.

The Commiſſion of Array is in force and no other Commiſſion, *Rot. Parlm.* 5. *H.* 4. *numb.* 24. an Act not printed, this Act was repealed by 4. and 5. *P. & M. cap.* 2. this repealed by the Act of 1. *Jacobi*, and ſo it is of force at this day, for the repealing

Statute

Statute is repealed 4. *pars inſtitut. fol.* 51. *&* 125. publiſhed ſithence this Parliament, by the deſire of the houſe of Commons, their Order is printed in the laſt leafe of the commentaries upon *Magna Charta.*

A booke allowed by Sir *Na. Brent* called the reaſon of the War: *fol.* 65.

Sir *Edward Cooke*, by their party is holden for the Oracle of the Law, who wrote the ſaide fourth part, in a calme and quiet time, and I may ſay, when there was no neede to defende the authority of the Commiſſion of Array.

For that objection, that that Commiſſion leaves power to the Commiſſioners to tax men *ſecundum facultates*, and ſo make all mens eſtates Arbitrary: the anſwer is, that in levying of publicke aydes upon mens goods and eſtates, which are variable, and probably cannot be certainly knowne by any but the owners, it is impoſſible to avoyd diſcretion in the aſſeſments, for ſo it ever was, and ever will bee By this appeares that the Votes of the two Houſes againſt the Commiſſion of Array, were againſt the Law.

H. 5.

The death of the King diſſolves the Parliament, if Kings ſhould referre to the politick capacity it would

2. *H.* 5. 4. *pars inſtit.* 46.

continue after his death, 4. *pars Inſt.* 46. which proves that the King can-

not be ſaid to be there when he is abſent, as now hee is: there is no *inter regnum* in the Kingdome the diſſolution of the Parliament by his death, ſhewes that the beginning and ends thereof referres to the naturall perſon of the King, and therefore hee may lawfully refuſe the Propoſitions.

2. *H.* 5 *Chap.* 6. to the King onely it belongs to make Leagues with Forraigne Princes? this ſhewes where the ſupreame power is, and to whom the Militia belongs.

8. *H.* 6. *numb.* 57. *Rotl. Parl. Cooke* 4 *pars inſtit.* 25. No priviledge of Parliament is grantable for treaſon, felony, or breach of the peace; if not to any one Member, not to two, not to ten, not to the major part, 19 *H.* 6. 62, The Law is the inheritance of the King and his people, by which they are ruled, King and people; And the people are by the Lawe bound to ayde the King, and the King hath an inheritance to hold Parliaments, and in the ayds granted by the Commonalty. If the major part of a Parliament commit treaſon, they muſt not be Judges of it, for no man or body, can be Judge in his owne cauſe, and aſwel as ten or any number may commit treaſon, the greater number may aſwell. *H.* 6.

The

31. H. 6. 13. Plowd. 334. The King by his Letters patents may conſtitute a County palatine and grant Regall rights, this ſhews where the ſupreame power is.

Ed. 4 17. Ed. 4. Rot. Parl. numb. 39. No priviledge of Parliament is grantable for treaſon, fellony, or breach of the peace, if not for one, not for two, or more, or a major part.

Calvins Caſe 7. part fol. 11, 12. The ſame perſons muſt not bee Judge and party. A corporate body can commit no treaſon, nor can treaſon be committed againſt a corporate body, 21. E. 4. 13. and 14. but the perſons of the men who make that body may commit treaſon, and commit it againſt the naturall perſon of him who to ſome purpoſes is a body corporate, but *quatenus corporate* no treaſon can bee committed by or againſt ſuch a body; that body hath no ſoule, no life, and ſubſiſts onely by the fiction of the Law, and for that reaſon the Lawe doth conclude as aforeſaide; therefore the Statute of 25. E. 3. muſt bee intended of the Kings naturall perſon, conjoyned with the politique which are inſeparable, and the Kings naturall perſon being at Holmby, his politique is there alſo, and not at Weſtminſter; for the politique and naturall make one body indiviſible. If

Plow. com. 213.

If all the people of England should breake the league made with a forraigne Prince, without the Kings conſent, the league holds and is not broken, and therefore the repreſentative body is inferiot to his Majeſties. 19 Ed 4. 46. 22 Ed. 4. Fitz. juriſdiction. laſt placita.

The King may erect a Court of Common pleas in what part of the Kingdome he pleaſeth by his letters patents; can the two Houſes doe the like?

1. Ed. 5. fol. 2. It cannot be ſaid that the King doth wrong, declared by all the Judges and Serjeants at Law then there. Ed. 5. 4 Ed. 4. 25. 3 Ed. 4. 29.

The reaſon is, nothing can be done in this Common-wealth by the Kings grant or any other act of his, as to the Subjects perſons, goods, Lands or liberties, but muſt be according to eſtabliſhed Lawes, which the Judges are ſworne to obſerve and deliver betweene the King and his people impartially to rich and poore, high and low; and therefore the Juſtices and the Miniſters of Juſtice are to be queſtioned and puniſhed if the Lawes be violated: and no reflection to be made on the King. All Counſellors and Judges for a yeere and three moneths untill the tumults began this Parliament; were all left 2 Parl. inſtit. 158.

to

to the ordinary courſe of Juſtice, what hath beene done ſithence is notorious.

R. 3. 1 R. 3. cap. 25. For great Cauſes and conſiderations an Act of Parliament was made for the ſafety of the ſaid Kings perſon: if a Parliament were ſo tender of King *Rich.* the 3. the Houſes have greater reaſon to care for the preſervation of his Majeſty.

Hen. 7. 11 H. 7. c. 1. The Subjects are bound by their allegiance to ſerve the King, for the time being, againſt every Rebellion, power and might, reared againſt him within this Land, that it is againſt all Lawes, reaſon and good conſcience, if the King ſhould happen to be vanquiſhed that for the ſaid deede and true duty and allegiance they ſhould ſuffer in any thing, it is ordained they ſhould not; and all Acts of proceſſe of Law hereafter to be made to the contrary are to be void: This Law is to be underſtood of the naturall Perſon of the King, for his politick capacity cannot be vanquiſhed, nor war reared againſt it.

Relapſers are to have no benefit of this Act.

12. H. 7. 20. 4 H. 7. 18. *Henry*, 8. 7 H. 7. 14. It is no Statute, if the King aſſent not to it, and he may diſaſſent, this proves the negative voice.

The

The King hath full power in all causes to doe justice to all men; this is affirmed of the King, and not of the two Houses. 24 H.8.c 12. 25 H.8. cap. 28.

The Commons in Parliament acknowledge no superior to the King under God, the Houses of Commons confesse the King to be above the representative body of the Realm.

Of good right and equity the whole and sole power of pardoning treasons, fellonies &c. belong to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the peace, &c. This Law condemns the practise of both Houses at this time. 27 H.8.c.24. Note.

The Kings Royall Assent to any Act of Parliament signed with his hand, expressed in his Letters patents under the great Seale, and declared to the Lords and Commons shall be as effectuall, as if he assented in his owne person; a vaine Act if the King be virtually in the Houses. 33 H.8.cap. 21.

The King is the head of the Parliament, the Lords the principal members of the body, the Commons the inferiour members, and so the body is composed, therefore there is no more Parliament without a King, then there is a body without a head. Dier 38. H. 8. fo. 59. 60.

There

There is a Corporation by the Common law, as the King, Lords, and Commons, are a corporation in Parliament, and therefore they are no body without the King.

14 H. 8. fol. 5.

The death of the King dischargeth all mainprise to appeare in any Court or to keepe the peace.

34 Ed. 3. 48
1 Ed. 4. 2.

The death of the King discontinues all Pleas by the Common-saw, which agreeth not with the virtuall power insisted upon now.

2 H. 4. 8.
1 H. 7. 10.
1 Ed. 5. 2.

Writs are discontinued by the death of the King; Patents of Judges, Commission for Justices of the Peace, Sheriffs, Escheators, determined by his death: Where is the virtuall power?

Ed. 6.
1 Ed. 6. c. 7.

All authority and jurisdictions spirituall and temporall is derived from the King, therefore none from the Houses.

1 Ed. 6. c. 2.

His Majesties Subjects, according to their bounden duties, ought to serve the King in his Warres, of this side or beyond the Seas, beyond the seas is to be understood for wages: This proves the power of warres, and preparation for warre to be in the King.

2. 3 Ed. 6. c. 2.
11 H. 7. c. 1.
Calvins Case.
Sa part Cooke.
1 Pars instit. 69.

It is most necessary both for common policy and duty of the Subject,

5. 6. Ed. c. 11.

to

to restraine all manner of shamefull slanders against their King, which when they be heard, cannot but be odible to his true and loving subjects, upon whom dependeth the whole unity and universall weale of the Realme. This condemnes their continuing of the weekely Pamphlets, who have beene so foule mouthed against his Majesty.

The punishment of all offenders against the Lawes, belongs to the King, and all jurisdictions doe, and of right ought to belong to the King. This leaves all to his Majesty. Q. *Mary*. 1 *Mar. Pl.* 2. *cap.* 2.

All Commissions to levy men for the warre, are awarded by the King: The power of warre onely belongs to the king. 4 5 *P & M. c.* 3. Q *Eliz.* 10 *Eliz. Pl.* 315.

It belongs to the king to defend his people, and to provide Armes and Force: No speech of the two Houses.

Rex ad sole gouvernment de ses subjects. Corps naturall le Roy & politique sunt un corps. That is, the king hath the sole government of his Subjects, the body politick and the naturall body of the king make one body, and not divers, and are inseperable and indivisible. *Plow.* 234. 242. 213. *Calvins case* 7. *pars fol* 12. *Plow.* 213.

The body naturall and politique make

Plow. 234. 243. 213. *Calvins case 7. pars fol. 12.* make one body, and are not to be severed: Ligeance is due to the naturall body, and is due by nature, Gods Law, and Mans Law, cannot be forfeited nor renounced by any meanes, it is inseperable from the person.

1 *Eliz. cap.* 1: *Cawdries case. 5. pars fol.* 2. Every Member of the House of Commons, at every Parliament takes a corporall Oath: That the King is the supreame and onely Governour in all causes in all his Dominions, otherwise he is no Member of that House; The words of the Law are, in all causes, over all persons.

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Cawdries* Case *ibid.*

43 *Eliz.* 3. *pars instit. fo* 6. 2. The Earle of Essex, and others, assembled multitudes of men to remove Councellors, adjudged Treason by all the Judges of England.

39 *Eliz. Hil.* 1 *Jacobi ibid.* To depose the king, or take him by force, to imprison him untill he hath yeelded to certaine demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams* Case.

10 *Ed. Bradf. case f.* 9. & 16. By all the Iudges of England *ibid.* 10 *Eliz. Plow.* 316, Arising to alter Religion established, or any Law, is treason; so for taking of the Kings Castles, Forts, Ports or Shipping, *Brooke* treason 24. 3. & 4. *Philip* and *Mary*, *Dier*, *Stafford's* Case concerning Scarborough.

The

The Lawe makes not the ſervant greater then the Maſter, nor the ſubject greater then the King, for that were to ſubvert order and meaſure.

The Law is not knowne but by Uſage, and Uſage proves the Lawe, and how Uſage hath beene is notoriouſly knowne. 10. Eliz. Plow. 319.

The King is our onely rightfull and lawfull Liege Lord and Soveraigne, we doe upon the knees of our hearts agnize conſtant Faith, Loyalty, and Obedience to the King and his Royal progeny, in this high Court of Parliament, where all the body of the Realme is either in perſon, or by repreſentation: Wee doe acknowledge that the true and ſincere Religion of the Church is continued and eſtabliſhed by the King. And doe recognize, as wee are bound by the Law of God and Man, the Realme of England and the Imperiall Crowne thereof doth belong to him by inherent birthright, and lawfull and undoubted ſucceſſion, and ſubmit our ſelves and our poſterities for ever, untill the laſt drop of our blood be ſpent, to his rule; and beſeech the King to accept the ſame as the firſt fruits of our Loyalty and faith to his Majeſty and his poſteriry for ever; and for that this Act is K. Iames 1 Iac. cap. 1. 2 Edw. 4. fol. 8

not

not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crown by the two Houses, but by inherent birth-right, and that there can be no Statute without his expresse assent, and destroyes the Chimera of the Kings virtuall being in the Houses.

3 Iac. cap. 4. 23 Eliz. c. 1. To promise obedience to the Pope or any other State, Prince or Potentate, other then the King, his heyres and successors, is treason; and therefore those persons who call the houses the Estates offend this Law.

K. Charles. Collection of Ordinances fol. 727. 1. pars ib. fo. 728. Such Bills as his Majesty is bound in conscience and justice to passe, are no Law without his assent.

To designe the ruine of the Kings person, or of Monarchy, is a monstrous and injurious charge.

Ibid. fol. 865. *Vbi Lex non distinguit, nec est distinguendum*, all the aforesaid Acts and Lawes doe evidently prove the Militia to belong to the king: that the king is not virtually in the two Houses; that the king is not considerable separately in relation to his politick capacity: that the king is not a person trusted with a power, but that it is his inherent birth-right from God, Nature,

Nature, and Law, and that he hath not his power from the people: Theſe Lawes have none of thoſe diſtinctions of naturall and politick, *abſtractum & concretum*, power and perſon: in *Cæſars* time this Iſland had Kings, and ever ſince, which is almoſt 17 hundred yeeres agoe.

No King can be named, in any time, made in this kingdome by the people; A Parliament never made **King**, for they were Kings before: the Parliaments are ſummoned by the Kings Writs, which for Knights, Citizens and Burgeſſes begins thus, viz.

Rex vic. Wilts. Saltem. Quia Nos de aviſamento & aſſenſu conſilii nri. pro quibuſ. arduis & urgentib. negotiis nos ſtatum & defenſionem Regni nri. Ang. & Eccleſ. Anglic. concernentibus quoddam Parliamentum nrum, apud B. teneri ordinavimus & ibid. cum Prelatis Magnatib. & proceribus dicti Regni nri. Colloquium habere & tractatum, tibi precipimus firmiter injungendo qd. facta Proclamatione in

prox. Comitatu tuo poſt receptionem ejuſd. Brevis, duos Milites gladiis cinctos, &c. eligi faceas ad faciendum & conſentiendum hiis quæ tunc ibidem de Communi Concilio nro. Angl. faventi Deo contigerit ordinari ſuper Negotiis antedictis, ita quod pro defectu poteſtatis hujuſmodi ſeu propter improvidam electionem Militum, Civium, & Burgenſium prad. dicta negotia nra, infecta non remanerent.

4. pars Inſtit. 241.

The King is *Principium, caput & finis Parliamenti*, the body makes not the head, nor that which is *poſterior*, that which is *prior*, *conſilium non eſt Preceptum, conſiliarii non ſunt Preceptores*, for Counſell to compell a conſent, hath not beene heard of to this time in any age, and the houſe of Commons, by the writt, are not called *ad conſilium*; the writts to the twelve Judges, Kings Counſell, twelve Maſters of the Chancery are *conſilium impenſuri*, and ſo of the Peeres. The Writs for the Comminalty, *Ad faciendum & conſentiendum*: Which ſhews what power the repreſentative body hath

4 pars Inſtit. fol. 3 & 4.

hath, they have not power to give an Oath; neither doe they claime it.

The King at all times, when there is no Parliament, and in Parliament is assisted with the advice of the Judges of the Law, 12 in number, for England at least hath 2 Sergeants when fewest; an Attorney and Solicitour, twelve Masters of the Chancery, his Councell of State consisting of some great Prelates, and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwayes of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in divine Law, the other Grandees in affaires of State, and managery of Government; The Judges, Kings Sergeants, Attorney, Solicitour, and Masters of the Chancery versed in the Law and Customes of the Realme: All sworne to serve the King and his people justly and truely, the King is also sworne to observe the Lawes, and the Judges have in their Oath a clause, that they shall doe common right to the Kings people, according to the established Lawes, notwithstanding any command of the King to the contrary, under the Great Seale

The Oath of the Iustices 18 of E. 3. among Statutes of that yeare.

or otherwiſe, the people are ſafe by the Lawes in force without any new: The Law finding the Kings of this Realme aſſiſted with ſo many great men of Conſcience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangeliſts, ſettles among other powers upon the King, a power to refuſe any Bill agreed upon by both Houſes, and power to pardon all offences, to paſſe any Graunts in his Minority, (there are many great perſons living hold many a thouſand pound a yeer by patents from *Edward* the ſixth, paſſed when he was but ten yeeres of age) not to be bound to any Law to his prejudice, whereby he doth not binde himſelfe, power of warre and peace, coyning of Money, making all Officers, &c. The Law, for the reaſons aforeſaid, hath approved theſe powers to be unqueſtionable in the King, and all Kings have enjoyed them till 3. *Nov.* 1640.

It will be ſaid notwithſtanding all this fence about the Lawes, the Laws have beene violated, and therefore the ſaid powers muſt not hold, the two Houſes will remedy this.

The anſwer to this is evident:

There

There is no time paſt, nor time preſent, nor will there be time to come, ſo long as men mannage the Law; but the Lawes will be broken more or leſſe, as appeares by the ſtory of every age. All the pretended violations of this time were remedied by Acts to which the King conſented before his departure 10. *Ian.* 1641. being then driven away by Tumults: And the Houſes for a yeere and almoſt three Moneths: From 3. *Nov.* 1640. to 10 *Ian.* 1641. as aforeſaid, being a yeere and almoſt three moneths, had time and liberty to queſtion all thoſe perſons who were either cauſes or inſtruments of the violation of any of the Lawes.

Examine how both Houſes remedied them in former times. Firſt, touching Religion, what hath beene done this way? Both Houſes in *Henry* the eights time tendred to him a Bill to be paſſed called commonly the Bill of the ſix Articles, this was conceived by them to be a juſt and a neceſſary Bill: Had not *Henry* the eight done well to have refuſed the paſſing of this Bill? Both Houſes tendred a Bill to him to take the reading of the Scriptures from moſt of the Laity: Had not King *Henry* the

eight deſerved much praiſe to reject this Bill ? In Queene *Maries* time both Houſes exhibited a Bill to her to introduce the Popes power and the Roman Religion ; had not Queene *Mary* done well to have refuſed this Bill ? Many ſuch inſtances may be given. The two Houſes now at Weſtminſter I am ſure will not deny but the refuſall of ſuch Bills had beene juſt, the King being aſſiſted as aforeſaid, and why not ſo in theſe times ?

For the Civill Government what a Bill did both Houſes preſent to *Richard* the third , to make good his Title to the Crowne ; had it not beene great honour to him to have rejected it ? What Bills were exhibited to *Henry* the eight by both Houſes for baſtardizing of his Daughter *Elizabeth*, a Queene of renowned memory , to ſettle the Crowne of this Realme , for default of Iſſue of his body, upon ſuch perſons as he ſhould declare by his Letters Patents, or his laſt will, and many more of the like? had not this refuſall of paſſing ſuch bills magnified his vertue, and rendered him to Poſterity in a different Character from what he now hath ?

And by the experience of all times and the conſideration of humane frailty,

fraiky, this concluſion is manifeſtly deduced, that it is not poſſible to keep men at all times (be they the Houſes, or the King and his Councell) but there will be ſometimes ſome deviation from the Lawes, and therefore the conſtant and certaine powers fixed by the ancient Law muſt not be made void, and the Kings Miniſters; the Lawes doe puniſh where the Law is tranſgreſſed, and they onely ought to ſuffer for the ſame.

In this Parliament the Houſes exhibited a bill to take away the ſuffrages of Biſhops in the upper Houſe of Parliament, and have ſithence agreed there ſhall be no more Biſhops at all, might not the King if he had ſo pleaſed have anſwered this bill with *Le Roy' aviſera*, or *ne veult*? it was againſt *Magna Charta*, *Articuli Cleri* and many other Acts of Parliament. And might have farther given theſe reaſons, if it had ſo pleaſed him for the ſame: Firſt, that this Bill deſtroyes the Writ whereby they are made two Houſes of Parliament, 14. *Hen.* 7. *fol.* 22. *Eveſq; eſt ſignior de grand honneur.* the King in the Writ being *cum prælatis colloquium habere*: Secondly, they have beene in all Parliaments ſince wee had any, and voted, but in

ſuch wherein they themſelves were concerned: And there have beene Biſhops heere ſithence we were Chriſtians, and the Fundamentall Law of the kingdome approves of them: If any of them were conceived offenſive, they were left to juſtice, and his Majeſty would put in inoffenſive men in their places; but ſithence his Majeſty hath paſſed the bill for taking away their Votes in Parliament, it is a Law that binds us ſo far.

Upon the whole matter the Law hath notably determined that Bils agreed by both Houſes, pretended to be for the publick good, are to be judged by the King, for in all Kings Raignes bills have beene preferred by both Houſes, which alwayes are pretended to be for the publique good, and many tims are not, and were rejected with *Roy's aviſera*, or *Roy ne veult*.

This Parliament began the 3 of *Novem.* 1640, before that time in all the kings reign no armed power did force any of the people to do any thing againſt the Law; what was done, was by his Iudges, Officers, Referes, & Miniſters from that time until the 10 of *Ja.* 1641. when the king went from London to avoyd the danger of frequent tumults, being a yeer and 3 months, Privy Counſellors and all his Iuſtices and Miniſters were leſt to the Iuſtice of the Law, there wanted not time to puniſh puniſhable men.

The

The Sphere of the Houſe of Commons is to repreſent the grievances of the Countrey, to grant aydes for the King upon all fit occaſions extraordinary, to aſſent to the making or abrogating of Lawes: The Orb of the houſe of Lords to reforme erroneous judgements given in the Kings Bench, to redreſſe the delayes of Courts of Juſtice, to receive all Petitions, to adviſe his Majeſty with their Councell, to have their Votes in making or abrogating of Lawes, and to propoſe for the common good, what they conceive meete.

Lex non cogit ad impoſſibilia, Subjects are not to expect from Kings impoſſible things, ſo many Judges, Counſellours, Sheriffes, Juſtices of the Peace, Commiſſioners, Miniſters of State, that the King ſhould over-looke them all, cannot be, it is impoſſible.

The King is virtually on his ordinary Courts of Juſtice; ſo long as they continue his Courts; their charge is to adminiſter the Lawes in being, and not to delay, deferre, or ſell Juſtice for any Commandement of the King. Wee have Lawes enough; *Inſtrumenta boni ſæculi ſunt boni viri*, good Miniſters, as Judges and Officers are many times wanting, the

houſes propoſe new Lawes, or abrogation of the old, both induce novelty; the Law for the reaſons aforeſaid, makes the King the onely Judge, who is aſſiſted therein by a great number of grave, learned and prudent men, as aforeſaid.

For the conſiderations aforeſaid the Kings Party adhered to him, **the Law** of the Land is their **Birthright**, their **Guide**, no offence is committed where that is not violated; they found the Commiſſion of **Array** warranted by the Law; they found the King in this Parliament to have quitted the **Ship-money**, **Knighthood-money**, **ſeven Courts of Juſtice**, conſented to a **Triennial Parliament**, ſettled the **Forreſt bounds**, tooke away **the Clearke of the Market** of the houſhold, truſted the Houſe with the **Navy**, paſſed an **Act not to diſſolve this Parliament** without the Houſes aſſent; no people in the world ſo free if they could have beene content with **Lawes**, **Oathes**, **and reaſon**, and nothing more could or can be deviſed to ſecure us, neither hath been in any time.

Notwithſtanding all this we found the King driven from **London** by frequen-

frequent tumults, that two thirds and more of the Lords had diſſerted that houſe, for the ſame cauſe, and the greater part of the Houſe of Commons left that Houſe alſo for the ſame reaſon; new men choſen in in their places againſt **Law**, by the pretended Warrant of **a counterfet Seale**; and in the Kings name againſt his conſent, levying warre againſt him, and ſeizing his Ports, Forts, Magazines and Revenue, and converting them to his deſtruction, and the ſubverſion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devſed new Oathes to oppoſe Forces raſed by the King, nor to adhere to him, but to them in this War which they call the **Negative Oath**, and **the Vow and Covenant**.

By ſeverall wayes never uſed in this kingdome, they have raiſed monies to foment this warre, and eſpecially to inrich ſome among them; namely, firſt, **Excize**, ſecondly, **Contributions**, thirdly, **Sequeſtrations**, fourthly, **Fift-parts**, fiftly, **Twentieth-parts**, ſixtly, **Wealemoney**, ſeventhly, **Sale of Plundered goods**, eighthly, **Loanes**, ninthly, **Benevolences**, tenthly, **Collecti-**

ons

ons upon their Faſt-dayes, eleventhly, new Impoſitions upon Merchandizes, twelfely, Guards maintained upon the charge of private men, thirteenthly, Fifty Subſidies at one time, foureteenthly, Compoſitions with ſuch as they call Delinquents, fifteenthly Sale of Biſhops Lands, &c.

From the Kings Party meanes of ſubſiſtance are taken; before any indictment, their Lands ſeized, their goods taken, the Law allowes a Traytour or Fellon attainted, *Neceſſaria ſibi & familiæ ſuæ in victu & veſtitu*, where is the Covenant? Where is the Petition of Right? Where is the liberty of the Subject?

1. R. 3. cap. 3. Bract. li. 3. c. 8 Stanford. 192. Sir Ger. Fleetwoods Calc. 8. pars Cook 7. H. 4. laſt caſe.

Firſt, wee have ayded the King in this warre contrary to the Negative Oath, and other Votes: Our warrant is the twenty fifth of *Edward* the third, the ſecond Chapter, and the ſaid reſolutions of all the Judges.

Secondly, wee have maintained the Commiſſion of Array, by the Kings Command, contrary to their Votes: Wee are warranted by the Statute of the fifth of *Henry* the fourth, and the judgement of Sir *Edward Cooke*, the Oracle of the Law as they call him.

4. pars Inſtit. 125. 2. Inſtit. 696. The Law ſo at the Edition of that booke. Hutton. and Crooke.

Thirdly, wee maintained Arch-

Biſhops

Biſhops and Biſhops, whom they would ſuppreſſe. Our warrant is, *Magna Charta*, and many Statutes more.

Fourthly, wee have maintained the **Common-prayer**, they ſuppreſſe it: Our warrant is five Acts of Parliament in *Edward* the ſixt, and Queene *Elizabeths* time, 5 *Peſche* 35. *Elizabeth inter placita Coronæ in Banco Regis*, New booke of Entries, *fol.* 252 *Penry*, for publiſhing two ſcandalous Libels againſt the Church Government, was indicted, arraigned, attainted, and executed at Tyburne.

Fiftly, we maintained the **Militia of the kingdome to belong to the King**, they the contrary: Our warrant is the Statute of the ſeventh of *Edward* the firſt, and many Statutes ſithence, the practiſe of all times, and the Cuſtome of the Realme.

Sixthly, wee maintained the **counterfeiting of the great Seale to be high Treaſon**, and ſo of the uſurpation of the **Kings Forts, Ports, Shipping, Caſtles, and his Revenue, and the Coyning of Money**, againſt them: Wee have our warrant by the ſaid Statute of the twenty fifth of *Edward* the third, Chapter the ſecond, and divers o-

thers

thers since, and the practise of all times.

Seventhly, wee maintaine that the **King is the only supreme Governour in all causes**: They, that his Majesty is to be governed by them: Our warrant is the Statutes of the first of Queene *Elizabeth*, Chapter the first, and the fifth of Queene *Elizabeth* the first.

Eighthly, Wee maintaine that the **King is King by an inherent birth-right, by nature, by Gods Law, and by the Law of the Land.** They say his Kingly right is an Office upon trust: Our warrant is the Statute of the first of King *James*, Chapter the first. And the resolution of all the Judges of *England* in *Calvins* Case.

9. Ed. 4. fol. 4.

Ninthly, wee maintaine that the **politick capacity is not to be severed from the naturall** They hold the contrary: Our warrant is two Statutes (*viz*) *exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third Chapter the second, and their Oracle who hath published it to Posterity, that **it is damnable, detestable, and execrable Treason,** *Calvins* Case *vers* 7. *fol.* 11.

Tenthly, wee maintaine that who

ayder the King at home or abroad, ought not to be molested or questioned for the same, they hold and practise the contrary; Our warrant is the Statute of the eleventh of *Henry* the seventh, Chapter the first.

Eleventhly, wee maintaine that **the King hath power to dissent to any Billagreed by the two Houses**; which they deny: Our warrant is the Statute of the second of *Henry* the fifth, and the practice of all times, the first of King *Charles*, Chapter the seventh, the first of King *James*, Chapter the first.

Twelfthly, wee maintaine that **Parliaments ought to be holden in a grave, and peaceable manner, without tumults**; They allowed multitudes of the meanest sort of the people to come to *Westminster* to cry for justice when they could not have their will, and keepe guards of armed men to wait upon them: Our warrant is the Statute of the seventh of *Edward* the second, and their Oracle. Coll. of Ord. *fol.* 31.

Thirteenthly, wee maintaine that **there is no State within this kingdome but the Kings Majesty, and that to adhere to any other State within this kingdome is high Treason**: Our warrant is the Sta-

tute

tute of the third of King *Iames*, Chapter the fourth, and the twenty third of Queene *Elizabeth*, Chapter the first.

Fourteenthly, wee maintaine that **to levy a warre to remove Counsellours, to alter Religion, or any Law established is high Treason**; They hold the contrary: Our warrant is the resolutions of all the Judges of *England* in Queene *Elizabeths* time, and their Oracle agrees with the same.

Fifteenthly, wee maintaine that **no man should be imprisoned, put out of his lands, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the Customes of the Realme, or by Act of Parliament**; They practise the contrary in *London*, *Bristol*, *Kent*, &c. Our warrant is *Magna Charta*, Chapter the twenty ninth, the **Petition of Right**, the third of King *Charles*, and divers Lawes there mentioned.

Wee of **the Kings party, did and doe detest Monopolies, and Shipmoney**, and all the **grievances of the people as much as any men living**, wee doe well know that our estates, lives, and fortunes are preserved

ved by the Lawes, and that the King is bound by his Lawes, wee love Parliaments, if the Kings Judges, Counſell or Miniſters have done amiſſe, they had from the third of *November*, 1640. to the tenth of *January*, 1641. time to puniſh them, being all left to juſtice, **where is the Kings fault?**

The Law ſaith **the King can doe no wrong**, that he is *medicus Regni pater patriæ ſponſus Regni qui per annulum*, is eſpouſed to his Realme at his Coronation; The King is Gods Lievtenant, and is not able to doe an unjuſt thing, theſe are the words of the Law.

11 part Cooks Reports Magdalen Colledge Caſe.

One great matter is pretended, that the people are not ſure to enjoy the Acts paſſed this Parliament, A ſucceeding Parliament may repeale them; The objection is very weake, a Parliament ſucceding to that may repeale that repealing Parliament: That feare is endleſſe and remedileſſe, for it is the eſſence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have power over Parliaments before; Parliaments are as the times are; If a turbulent faction prevailes the Parliaments are wicked as appeares by the examples recited before of extreme

wicked

wicked Parliaments; if the times be sober and modest, prudent and not biassed, the Parliaments are right good, and honourable, and they are good medicines and salves; but in this Parliament *excessit medicina modum.*

In this cause and warre betweene the Kings Majesty, and the two Houses at *Westminster*, what guide had the Subjects of the Land to direct them **but the Lawes?** What meanes could they use to discerne what to follow, what to avoyd, but the Lawes? The King declares it **Treason** to adhere to the Houses in this warre: The Houses declare it **Treason** to adhere to the King in this warre: The Subjects for a great and considerable part of them (Treason being such a crime as forfets life and estate, also renders a mans Posterity base, beggerly, and infamous) looke upon the Lawes, and finde **the Letter of the Law requires them to assist the King,** as before is manifested; was ever Subject criminally punisht in any age or Nation for his pursuit of what the Letter of the Law commands?

The Subjects of the kingdome finde the distinction and interpretation now put upon the Lawes of *Abstractum & Concretum*, Power and Person,

ſon, body politick, and naturall, perſonall preſence and virtuall, to have beene condemned by the Law; and ſo the Kings Party had both the Letter of the Law, and the interpretation of the Letter cleared to their judgments, whereby they might evidently perceive what ſide to adhere to, what ſatisfaction could modeſt peaceable and loyall men more deſire?

A verbo legis in criminibus & pœnis non eſt recedendum, hath beene an approved maxime of Law in all ages and times: If the King be King and remaine in his Kingly Office (as they call it) then all the ſaid Lawes are againſt them without colour; they ſay the ſaid Lawes relate to him in his Office, they cannot ſay otherwiſe, they make Commiſſions and pardons in the Kings name, and the perſon of the King and his body politick cannot, nor ought to be ſevered as hath beene before declared: And **the Members of both Houſes have ſworne conſtantly in this Parliament that the King is the onely ſupreme Governour in all cauſes, over all perſons at this preſent time.**

Coll. of Ordinances 777.

5. *Eliz. cap.* 1.

1. *Eliz. cap.* 1.

For what of verball or perſonall commands of the King which is objected,

jected; wee affirme few things to be subject thereto by the Law: But his Majesties Command under his great Seale, which in this warre hath beene used by the Kings Command for his Commission to leavy and array men, that is no personall command (which the Law in some cases disallowes) but that is such a command, so made, as all men hold their Lands by, who hold by Patents; all Corporations have their Charters which hold by Charters, and all Judges and Officers their places and callings.

Ob. It is objected, the King cannot suppresse his Courts of Justice, and that this war tended to their suppression.

Sol. The answer is, the King cannot nor ought to suppresse Justice, or his Courts of Justice, nor ever did; but, Courts of Justice by *abuser or non user* cease to be Courts of Justice; when Judges are made and proceedings in those Courts holden by others then Judges made by the King, and against his command under the great Seale, and his Majesty is not obeyed, but the Votes of the Houses, and his Judges breaking that condition in Law, of trust and loyalty, implyed in their Patents, are no longer his Judges;

7 pars The Earle of Westmerlands Case. *1 Eliz. Dier. 165. 7. pars Cooke.*

The case of discontinuance of Processe.

ges; they obey and exerciſe their places by vertue of Writs and Proceſſes under a counterfet Seale: The king onely can make Judges, the twenty ſeventh of *Henry* the eighth, Chapter the twenty fourth, **Juſtices of the Peace, &c.** The kings Patent makes Judges: The chiefe Juſtice of the kings Bench is made by the kings writ onely of all the Judges. 28. *H* 8. *Dier* 11.

The **Great Seale** is the key of the kingdome, and meete it is that **the King ſhould have the key of his kingdome about him**; which confutes their ſaying that the king got the Seale away ſurreptitiouſly. *Artieuli ſuper chartas cap.* 5. 2 *pars inſtit.* 552.

The king, and he only may remove his courts from *Weſtminſter* into ſome other place: at *Yorke* the Tearmes were kept for ſeaven yeeres, in *Edward* the firſt's time; but for the Court of Common pleas, the place muſt be certaine; for the kings Bench and Chancery, the king by the Law may command them to attend his perſon alwayes if it ſeeme ſo meete unto him; but the removing of the Common pleas muſt be to a place certaine, and ſo notified to the people. *Britton fol.* 23.

All the bookes of Law in all times agree, that the king may grant conuſance

ſince of all Pleas at his pleaſure within any County or Precinct to be holden there onely, and remove the Courts from *Weſtminſter* to ſome other place (for the Common Pleas, the place muſt be certaine, and ſo notified to the people) and adjourne the Tearmes as he ſees cauſe: All which the two Houſes have violated.

6 H. 7. 9.
6 Eliz. Dier. 226.

Some ſeeming objections of Maſter Prinn's, *ſcattered in divers books anſwered, and the truth thereby more fully cleered.*

THE firſt of *Henry* the fourth, revived the Statute of the eleventh of *Richard* the ſecond, and repeales the one and twentieth of *Richard* the ſecond, whereby certaine perſons were declared Traytors to the King and kingdome, being of the Kings Party, by 11. *Rich.* 2. 1 *Ob.*

True, but note, the eleventh of *Richard* the ſecond, a Parliament beſet with 40000 men, and the King aſſents to it, ſo an Act, and beſides the firſt of *Henry* the fourth declares, that the Treaſons mentioned in the Act of the eleventh of *Richard* the ſecond, being but againſt a few private men, ſhall not be drawne into example, and that no Treaſon ſhould be but ſuch as the twenty fifth of *Edward* the third declares: All theſe are Acts paſſed by the King, and the three Eſtates, nor to be drawne into example in a tumultuous time, by a beſieged Parliament, with an Army, and *Sol.* 9 *Ed.* 4. *fol* 30.

Henry

Henry the fourth being an Uſurper makes that Act of the firſt of *Henry* the fourth to ſecure himſelfe : Alſo what is this to the Votes of the two Houſes onely at this time ?

2. ob. The Court of Parliament is above the King , for it may avoyd his Charters, Commiſſions, *&c.* granted againſt the Law.

Sol. And the Law is above the King.

By the ſame reaſon you may ſay that the Courts of Chancery, or any of the Courts of Law at *Weſtminſter* are above the king, for they make of no effect the kings Charters , which are paſſed againſt the Law ; and the king is ſubject to Law, and ſworne to maintaine it. Againe, it is no Parliament without the king, and the king is the head thereof , he is *principium caput & finis* of a Parliament, as *Modus tenendi Parliament*, hath it , and two Houſes onely, want *principium Caput & finis* of a Parliament, and it is a ſorry Parliament that wants all theſe : And therefore to ſay that Parliaments are above the King, is to ſay the King is above himſelfe.

3. ob. The Parliament can enlarge the Kings prerogative , therefore it is above him.

Sol. If the King aſſent, otherwiſe not ;

and

and then it is an Act of Parliament, and otherwiſe no Act.

Bracton ſaith, God, the Law, and the Kings Court, (viz.) his Earles and Barons are above the King, *viz.* in Parliament as Mr. *Prinne* expounds it. 4. ob. 5 ob.

Where is then the Houſe of Commons? Indeed, take God, the Law, and Earles and Barons together, it is true; but to affirme that the Earles and Barons in Parliament are above the King (the King being the head of the Parliament, and they one of the members) how an inferiour member is above the head, is hard to conceive; beſides, that poſition deſtroyes all Mr. *Prinnes* diſcourſe, who attributes ſo much to the Houſe of Commons.

The King is but one of the three Eſtates of Parliament, and two are greater then one; therefore above.

The Legs, Armes, and Trunke of the body are greater then the Head, and yet not above, nor with life without it; the argument holds for quantity, but not for quality; and in truth, the King is none of the three Eſtates but above them all; the three Eſtates are, the Lords Spirituall, the Lords Temporall, and the Commons; *Coke*, their Oracle, in his Chap of Parl. f. 1. 5 ob. 5 ob.

In Corporations, the greater num-

6 Ob. bet of voyces make all the Acts of the Corporation valid; therefore so in Parliament.

Sol. By this reason the Kings assent is needelesse, and to no end, and all the Acts of Parliament formerly mentioned, and Law-bookes have quite mistaken the matter, which with unanimous voice requires the Kings assent as necessary: besides, the Corporations are so constituted by the kings Charters, and the greater number of Votes shall make their Acts valid.

7 Ob. The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

Sol. In his other Courts of Justice he hath no voice, he is none of the Judges, in the Parliament he hath; if his presence be not necessary, his voice is not, nor his assent.

8 Ob. Soveraigne power of Parliaments, 46. The originall prime legislative power of making Lawes, to bind the Subjects and their posterity, rests not in the King, but in the Kingdome and Parliament, which represents it.

Sol. Master *Prinne* in the same leafe affirmes, and truly, that the Kings assent is generally requisite to passe Lawes and ratifie them; the King,

King is the Head of the Kingdome and Parliament, how then can a Body act without a Head?

A major part of a Corporation bindes, therefore the major part in Parliament, and so of by Lawes. 9 Ob.

The Corporation is so bound, either by the Kings Charters, or by prescription, which sometimes had the Kings concession; but prescription, and Law, and practise, alwayes left the King a negative voice. Sol.

The King cannot alter the Bills presented to him by both Houses, g°. 10 Ob.

True, but the King may refuse them. Sol.

Acts of Parliament and Lawes ministred in the Raignes of Usurpers, bind rightfull Kings, g°. 11 Ob.

What is this to prove the two houses power only, which is the question? A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytours and Rebells to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Usurper: But heere is a King still in both cases, and the pro- Sol. 9.Ed.4.11.

ceedings at Law holds, the Judges having their Patents from the being Kings, in the Raignes of Kings, *de facto* or *de jure*, for all Kings are bound, and ſworne to obſerve the Lawes.

12 Ob. A King dies without Heire, is an Infant, *non compos mentis &c.* the two Houſes may eſtabliſh Lawes, g°.

Sol. There is no *Inter-regnum* in England, as appeares by all our Bookes of Law; and therefore the dying without Heire is a vaine ſuppoſition, and by their principle he is conſiderable in his politick capacity, which cannot dye at all: The Protectour, aſſiſted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Sergeants at Law, his twelve Maſters of the Chancery, hath in the Kings behalfe, and ever had a Negative Voice; but what is this to the preſent queſtion? Wee have a King of full age, of great wiſdome and judgement; the power of the two Houſes in ſuch a caſe to be over the King, cannot be ſhowne.

13 Ob. The King cannot diſ-aſſent to publique and neceſſary Bills for the common good, g°.

Sol. Nor ever did good King; but who ſhall

ſhall be judge, whether they be publique and neceſſary? The *major* part in either of the Houſes, for paſſing of Bills ſo pretended, may be but one or two voyces, or very few, and perhaps of no judicious men; is it not then fitter or more agreeable to reaſon, that his Majeſty and Councell of State, his twelve Judges, his Sergeants, Attorney, and Solicitor, twelve Maſters of the Chancery, ſhould judge of the conveniency and benefit of ſuch Bills for the publick good, rather then a *minor*, (of which ſort there may be in the Houſes) or a weake man, or a few, who oftentimes carry it by making the *major* part, which involves the conſent of all? Let reaſon determine.

The Kings of *England*, have been elective; and the King by his Coronation Oath is bound to maintaine *juſtas leges & conſuetudines quas vulgus elegerit*, &c. 1406.

Popery hath beene in the kingdome, and therefore to continue it ſtill, will not be taken for a good argument; when thinges are ſetled for many ages, to looke back to times of confuſion is to deſtroy all repoſe: The Act of Parliament, of the 1. of *K. James*, Chapter the firſt, and all our *Sol.*

extant Lawes ſay, that the Kings Office is an heritage inherent in the bloud of our Kings, and their birthright.

2 Ed. 4. 2. And Uſurpers that come in by the conſent of the people, are Kings *de facto*, but not *de jure*, as appeares by the Acts of Parliament declaring them ſo; and by all our Law books and the fundamentall conſtitution of the Land, Regall power is hereditary and not elective.

2 Hen. 5. For the words (*vulgus elegerit*) if *vulgus* be applyed to the Houſe of Commons, they of themſelves can make no Lawes: The Peeres were never yet tearmed *vulgus*; but allowing they be ſo called, the Lawes to be made be juſt, and who is fit to judge thereof, is before made evident.

25 Ed. Cuſtomes cannot referre to future time, and both are coupled, Lawes and Cuſtomes.

Princes have beene depoſed, and may be by the two Houſes, &c.

Bol. The Depoſers were Traytours, as appeares by the reſolution of all the Judges of *England*; *Coke*, Chap. Treaſon, in the ſecond part of the Inſtitutes: And never was King depoſed but in tumultuous and mad times, and by the power of Armies, and

and they who were to be the ſucceeding Kings in the head of them, as *Edward* the third, and *Henry* the fourth.

The appeale to the Parliament for errours in judgements in all Courts is frequent, &c. 160.

This is onely to the Houſe of Lords, and that is not the Parliament; the Houſe of Commons have nothing to doe therewith; and in the Houſe of Peeres, if a Writ of Errour be brought to reverſe any judgement, there is firſt a petition to the King for the allowance thereof, and the reaſon of the Law in this caſe is, for that the Judges of the Land all of them, the Kings Councell, and twelve Maſters of the Chancery aſſiſt there, by whoſe advice erronious judgements are redreſſed. 161.

The Parliaments have determined of the rights of Kings, as in *Henry* the ſixth time, and others, and Parliaments have bound the ſucceſſion of Kings; as appeares by the Statute of the thirteenth of Queene *Elizabeth*, Chapter the firſt: And the diſcent of the Crown is guided rather by a Parliamentary Title then by Common Law, &c. 162.

If this objection be true, that the 163.

Title to the Crowne is by Parliament, then wee had no Uſurpers, for they all had Parliaments to back them; yea, **Richard** the third, that Monſter. All our Bookes of Law ſay they have the Crowne by diſcent, and the Statutes of the Land declare, that they have the ſame by inherent birth-right. And the Statute of the thirteenth of **Elizabeth**, the firſt Chapter, was made to ſecure Queene **Elizabeth** againſt **the Queene of Scots**, then in the kingdome, claymming the Crowne of **England**, and having many adherents: And that Statute to that end affirmes no ſuch power in the two Houſes (which is the queſtion) but in Queene **Elizabeth**, and the two Houſes, which makes againſt the pretence of this time.

Maſter **Prynne**, *fol.* 104 of his booke, intituled, **the Parliaments ſupreme power**, *&c.* Objecting the Statute of the firſt of **Queene Elizabeth**, and his owne Oath, that the King is the onely ſupreme Governour of this Realme; Anſwers, The Parliament is the ſupreme power, and the King ſupreme Governour: And yet there **he allowes him a Negative Voyce**; and *fol.* 107, confeſſeth that

that Acts of Parliament tranſlated the Crowne from the right Heires at Common-law, to others who had no good Title, then the Parliamentary Title makes not the King, ſo powerfull is truth, that it eſcapes from a man unawares: To make a diſtinction betweene ſupreme Governour, and ſupreme power, is very ſtrange, for who can governe without power?

The King aſſembles the Parliament by his Writ, adjournes, prorogues, and diſſolves the Parliament, by the law at his pleaſure, as is evident by conſtant practiſe, the Houſe of Commons never ſate after an adjournment of the Parliament by the Kings command: Where is the ſupreme power? Vide *Speed.* 645. 4 par. Inſtit. 27. & 2.

The King by his Oath, is bound to deny no man right, much leſſe the Parliament, to agree to all juſt and neceſſary lawes propoſed by them to the King. This is the ſubſtance of the diſcourſe againſt the Kings Negative Voyce. 18 Ed.

The King is ſo bound as is ſet downe in the Objection; but who ſhall judge whether the bill propoſed be juſt and neceſſary? For all that they doe propoſe are ſo pretended and *Sol.*

carried in either Houſe, ſometimes by one or two Voyces; or ſome few as aforeſaid, and certainely as hath beene ſhewen, the King, his Counſell of State, his Judges, Sargeants, Attorney, Sollicitor, and twelve Maſters of the Chancery can better judge of them, then two or three, or few more.

Mr. Prynne *fol.* 45. In his booke of the Parliaments intereſt to nominate Privy Councellors, calleth the opinion of the **Spencers to divide the Perſon of the King from his Crowne, a ſtrange opinion,** and cites **Calvins** Caſe, but leaves out the concluſions therein mentioned, *fol.* 11. Maſter Prynne ſaith there, But let this opinion be what it will; without the Kings Grace and Pardon it will go very farre, and two Acts of Parliament there mentioned are beyond an opinion: And in his booke of the opening of the Great Seale, *fol.* 17. The Parliament hath no juriſdiction to uſe the Great Seale for Pardons Generall or Particular. Where is the ſupreme power then?

Calvins caſe 7. pars, fol. 11a

Mr. Prynnes (opening of the Seale) **pag.** 19. ſaith, the Noblemen and State, the day after the Funerall of King **Henry** the third (King Edward

ward the first his ſonne being in the Holy Land) made a new Great Seale, and Keepers of the ſame; And in Henry the ſixts time, in the firſt yeere of his Reigne, the like was done in Parliament.

A ſacto, ad jus, is no good Argument, for that in Edward the firſts time, it was no Parliament, for King Henry the third was dead, which diſſolved the Parliament, if called in his time, and it could be no Parliament of Edward the firſts time, for no Writ iſſued to ſummon a Parliament in his Name, nor could iſſue but under that New Seale, it was ſo ſuddainely done after Henry the thirds death, King Edward the firſt being then in the Holy Land, it was the firſt yeere of his Reigne, and no Parliament was held that yeere, nor the ſecond yeere of his Reigne: The firſt Parliament that was in his Reigne, was in the third yeere of his Reigne, as appeares by the printed Acts: Alſo the making of this Seale was by ſome Lords then preſent; What hand had the Commons in it? Concerning the Seale made in Henry the ſixths time, the Protector was Vice-Roy according to the courſe of law, and ſo the making

of

of that Seale was by the Protector in the Kings name, and that Protector, Humphrey Duke of Gloucester, as Protectour, in the Kings Name ſummoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainely, for that Parliament was in the firſt of Henry the ſixth, and the firſt holden in his time, and power given by Commiſſion to the ſaid Duke, then Protector, to ſummon that Parliament, Prynne, *ibid. fol.* 19. But the new counterfeit Seale was made when the King was at Oxford, in his owne kingdome, and not in the holy Land.

Mr. Prynne in his booke of the two Houſes power to impoſe Taxes, reſtraines Malignants againſt any *Habeas Corpus, &c* ſaith, that the Parliament is above *Magna Charta*, and *fol.* 15. *ibid* The Parliament hath power over *Magna Charta* to repeale the ſame when there is Cauſe.

This Argument ſuppoſeth that they have the Kings power, which hath appeared formerly they have not: But ſuppoſe they had, *Magna Charta* containes many Morall Laws, which by the Law of the Land a Parliament cannot alter, 21 H. 7. 2.

D.

D and Student, a Dialogue. For example, it ſaith cap. 18. Juſtice ſhall not be ſold, delayed, nor denyed to any man; but by this Argument the Parliament may make Law to delay, deny, and to ſell Juſtice, which ſurely is a very ill poſition to maintaine.

What they would have, doth now by the Propoſitions ſent to Newcaſtle to his Majeſty appeare, whereby they would have him diveſt himſelfe, and ſettle in them all his Kingly power by Sea and Land, and of themſelves to have power, without him, to lay upon the people of this Land what taxes they thinke meet, to aboliſh the Common prayer-booke, to aboliſh Epiſcopacie, and to introdure a Church Government not yet agreed, but ſuch as they ſhall agree on.

His Majeſty finding a prevailing party in both Houſes to ſteere this courſe, and being chaſed away with Tumults from London, leaves the Houſes for theſe Reaſons. (viz.)

First, because to alter the Government for Religion, is against the Kings Oath.

Secondly, against their Oathes: For every of them hath ſworne in this Parliament, That His Majeſty

is

is the only ſupreme Governour in all Cauſes Eccleſiaſticall and over all perſons.

Thirdly, this courſe is againſt *Magna Charta*, the 1. chap. and the laſt, *Salvæ ſint Epiſcopis omnes libertates ſuæ*, Confirmed by thirty two Acts of Parliament: and in the two and fortieth of **Edward** the third, the firſt Chapter enacts, if any Statute be made to the contrary, it ſhall be holden for none: and ſo it is for judgements at Law, in the 25 of **Edward** the 1. chap. 1. 2. The Great Charter is declared to be the Common Law of the Land.

Fourthly, **they endeavour to take away** by their Propoſitions, **the Government of Bishops**, which is as ancient as Chriſtianity in this Land, and the **Booke of Common-prayer** ſettled by five Acts of Parliament, and compiled by the **Reformers and Martyrs**, and practiſed in the times of foure **Princes**.

Fifthly, theſe Propoſitions taking away from his Majeſty **all his power by Land and Sea**, rob him of that which all his Anceſtors, Kings of this Realme, have enjoyed: That enjoyment and uſage makes the **Law**, and **Right** by the ſame to his Majeſty

They are against their owne Protestation made this Parliament, (viz.) to maintain his Royal Person, Honour, and Estate; They are against their Covenant, which doth say, that they will not diminish his just power and Greatnesse.

For these reasons his Majesty hath left them, and as is believed, will refuse to agree to the said Propositions, as by the fundamentall Law of the Land he may (having a Negative Voice) to any Bills proposed.

The result of all is upon the whole matter: That the King thus leaving of the Houses, and his denial to passe the said propositions, are so far from making him a Tyrant, or not in a condition to governe, at the present; that thereby he is rendred a just, Magnanimous, and pious Prince: so that by this it appeares clearly to whom the Miseries of these times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall pardon.

God save the King.

DAVID JENKINS, now Prisoner in the Tower.

28. Aprilis, 1647.

The Vindication of Iudge Ienkins *Prisoner in the* Tower, *the* 29 *of* Apill, 1647.

I Was convened upon Saturday the 10 of this moneth of Aprill before a Committee of the House of Commons, wherein Mister Corbet had the Chaire; and I was there to be examined upon some questions then to be propounded to me; to which questions I refused to give any other answer then that which was set downe in a paper I then delivered to the said M Corbet, which followeth in these words:

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging, nor obeying the power of the two Houses, by adhering to the King in this warre. I deny this to be Treason, for the supreame and onely power by the Lawes of this Land, is in the King: If I should submit to any examination derived from your power, which by the Negative Oath stands in opposition to the Kings Power, I should

ſhould confeſſe the power to be in you, and to condemne my ſelfe, for a Traitour, which I neither ought nor will doe.

I am ſworne to obey the King, and the Lawes of the Land; you have not power to examine me by thoſe Lawes, but by the Kings Writ, Patrent, or Commiſſion; if you can produce either thereof, I will anſwer the queſtions you ſhall propound; otherwiſe I cannot anſwer thereto, without the breach of my Oath, and the violation of the Lawes, which I will not doe to ſave my life.

You your ſelves, all of you this Parliament, have ſworne that the King is our onely and ſupreame Governour; your Proteſtation, your Vow and Covenant, your ſolemne League and Covenant, your Declarations, all of them publiſht to the Kingdome, that your ſcope is the maintenance of the Lawes; thoſe Lawes are and muſt be derived to us, and enlivened by the onely ſupreame Governour, the Fountaine of juſtice, and the life of the Law, the King. The Parliaments are called by his Writs, the Judges ſit by his Patents,

tents, so of all other Officers, the Cities and Townes corporate, governe by the Kings Charters; and therefore since by the Law I cannot be examined by you, without a power derived by his Majesty, I neither can, nor will, nor ought you to examine me upon any questions. But if as private Gentlemen, you shall be pleased to ask me any questions, I shall really and truely answer every such question, as you shall demand.

April 10. 1647. *David Ienkins.*

This Paper hath beene mis-represented to the good people of this City by a printed one, stiling it my Recantation, which I owne not; and besides is in itselfe repugnant (just like these times) the Body falls out with the Head. To vindicate my selfe from that Recantation, and to publish to the world the realty of the Paper then delivered to Mr. Corbet, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed Treason, Murther, or Felony, hath any assurance at all for so much

as one houre of life, Lands or Goods, without the Kings gratious pardon, 27 Hen. 8. cap. 24.

The King is not virtually in the two Houses at Westminster, whereby they may give any assurance at all to any person, in any thing, for any such offence.

1. The House of Commons have declared to the Kingdome in their Declaration of the 28 of November last, to the Scots Papers, p. 8. That the King at this time is not in a condition to governe. No person or thing can derive a vertue to other men, or things, which it selfe hath not; and therefore it is impossible that they should have a vertue from the King to govern, which they declare he hath not himselfe to give.

2. The Law of the Land is, That no person in any Parliament hath a voyce in the House of Commons, but that he stands a person to all intents and purposes as if he had never beene elected or returned, if before he sit in the House, he take not his Oath upon the holy Evangelists, that the Kings Majesty is the onely and supreame Governour over all persons in all Causes. All the Members of the said House have taken 5 Eliz. cap. 1.

taken it, and at all times as they are returned doe take it; otherwiſe they have no colour to intermeddle with the publick Affaires. How doth this Solemne and Legall Oath agree with their ſaid Declaration, **That the King is in no condition to governe?** By the one it is ſworne, he is the only ſupreame Governour; by the other, that he is not in a condition to governe.

3. The Oath is not, that the King was, or ought to be, or had beene, before he was ſeduced by ill Councell, our only and ſupreame Governour in all Cauſes, over all perſons; but in the preſent tenſe, **that he is our only and ſupreame Governour**, at this preſent, in all Cauſes and over all perſons. So they the ſame perſons ſwear one thing, and declare to the Kingdome the contrary of the ſame thing, at the ſame time, in that which concerneth the weale of all this Nation.

4. The Miniſters in the Pulpits doe not ſay, what they ſwear in the Houſe of Commons. Who ever heard ſithence this unnaturall Warre, any of their Presbyters attribute that to his Majeſty which they ſweare? The reaſon is, their Oath is take at **Weſtminſter** amongſt themſelves: that which

their

their Miniſters pray and preach, goes amongſt the people. To tell the people that the King is now their only and ſupreame Governour in all Cruſes, is contrary to that the Houſes doe now practiſe, and to all they act and maintaine. They, **the two Houſes forſooth**, are the only and ſupreame Governours in default of the King, for that he hath left his great Councell, and will not come to them, and yet the King deſires to come, but they will not ſuffer him, but keepe him priſoner at **Holmby**: ſo well doe their Actions and Oaths agree.

5. They ſweare now, King **Charles** is their only and ſupreame Governor; but with a reſolution at the time of the Oath taking, and before and after, that he ſhall not be only or ſupreame Governour, or only and ſupreame, but not any Governour at all: For there is no point of Government, but for ſome yeares paſt they have taken to themſelves, and uſed his name only, to abuſe and deceive the people.

6. That this virtuall power is a meere fiction, their Propoſitions ſent to **Oxford**, to **Newcaſtle**, to be ſigned by the King, doe prove it ſo. What needes this adoe, if they have the virtuall Power with them at **Weſtminſter**?

7. To

7 To affirme that the Kings power (which is the vertue they talke of) is ſeparable from his perſon is High Treaſon by the Law of the Land; which is ſo declared by that learned man of the Law, Sir **Edward Cooke**; ſo much magnified by this preſent Parliament, who in the 7 part of his Reports in **Calvins** caſe, fol. 11 ſaith thus. **In the reigne of Edward the ſecond, the Spencers, the Father and Sonne, to cover the Treaſon hatched in their hearts, invented this damnable and damned opinion, that homage and Oath of Ligeance was more by reaſon of the Kings Crowne, (that is of his politick capacity) then by reaſon of the perſon of the King upon which opinion they inferred three execrable and deteſtable conſequences. 1. If the King doe not demeane himſelfe by reaſon in the right of his Crowne his Liges are bound by Oath to remove the King. 2 ſeing that the King could not be reformed by ſute of Law, that ought to be done per aſperta that is by force. 3. That his Liges be bound to governe in ayde of him, and in default of him; all which were condemned by two Parliaments, one**

in

in the raigne of Edw. 2. called *exilium Hugonis le Spencer*; and the other in *Anno* 1. Edw. 3. cap. 2.

And that the natural body and politick maks one indivisible body, & that these two bodies incorporate in one person make one body and not divers, is resolved as the law of Eng. 4. Eliz. Ploydon Cō fol. 213. by Sir Robert Catlin, L. Chiefe Justice of Eng. Sir James Dier, L. Chief Justice of the Common pleas, the L. Sanders, L. Chief Baron of the Exchequer, & by the rest of the Judges, viz. Justice Rastall, Justice Browne, Justice Corbet, Justice Weston, Baron Frevyll, Carus and Powtrel, Sergeant to the Queene, Gerrard Atturny Generall; Carell Atturny of the Dutchy; Plowdon the learnedest man of that age, in the knowledge of the Law, and Customes of the Realme.

8. The Law in all ages without any controversie is and hath been, that no Act of Parliament binds the Subjects of this Land without the assent of the King, either for Person, Lands, Goods, or Fame. No man can shew any sillable, letter, or line to the contrary in the bookes of the Law, or printed Acts of Parliament, in any age in this Land? If the

9. Hen. 3. Magna Charta. So in every Age till this day, and in every Kings time, as appeares by the Acts in Print,

the virtuall power be in the Houſes, there needes no aſſent of the Kings. The ſtiles of the Acts printed from 9 Hen. 3. to 1 Hen. 7. were either, **The King ordaines at his Parliament**, &c. or, **the King ordaineth by the advice of his Prelates and Barons, and at the humble Petition of the Commons**, &c. In Hen. 7. his time the ſtile altered, and hath ſithence continued thus; **It is ordained by the Kings Majeſty, and the Lords ſpirituall and temporall, and Commons in this preſent Parliament aſſembled**: So that alwayes the Aſſent of the King giveth the life to all, as the ſoule to the body; and therefore our Law-bookes call **the King, the Fountaine of Juſtice, and the life of the Law.**

1 part of the Inſtit S. fl. 234. in five where many of the Law-Bookes are cited.

7 Hen. 7. 14. 12. of Hen. 7. 20.

9. Mercy as well as Juſtice belongs by the Law of the Land onely to the King. This is confeſſed by Mr. **Prin**, and it is ſo without any queſtion: The King can onely pardon, and never more cauſe to have ſufficient pardons then in ſuch troubleſome times as theſe, and God ſend us pardons and peace: None can give any pardon, but the King by the Law of the Land: **The whole and ſole power of pardoning Treaſons and**

2 Hen. 4. Cap. 22. 4 pars inſtit. 42. Mr. Prin in his Treatiſe of the great Seale Fol. 17. 27 Hen. 8. Chap. 24.

and Felonies belongs to the King are the words of the Law, and it is a deluſion to take it from any other and utterly invalid 27. Hen. 8. cap. 24.

10. Queene Elizabeth ſummoned her firſt Parliament, to be held the 23 of Jan. in the firſt yeare of her Majeſties Reigne; The Lords and Commons aſſembled by force of the ſame Writ, the 21 day the Queen fell ſick and could not appeare in her perſon in Parliament that day, and therefore prorogued it untill the 25 of the ſame Month of January: **Reſolved by all the Judges of England, that the Parliament began not the day of the returne of the Writ, viz. the 23 of January, when the Lords and Commons appeared, but the 25 of the ſaid moneth when the Queene came in perſon;** which ſheweth evidently that this virtuall preſence is a meere deluding fiction that hath no ground in Law, reaſon, or ſence. They have the King now a priſoner at Holmby, with guards upon him, and yet they governe by the virtuall power of their Priſoner. Theſe are ſome few of the cauſes and reaſons which moved me to deliver that paper to Mr. Corbet, which I am ready to juſtifie with my life, and

3 of Eliz. Dier. 203.

should hold it a great honour to dye for the honourable, and holy Laws of the Land: that which will save this Land from destruction, is an Act of Oblivion, and his Majesties gratious generall pardon, the Souldiers their Arreares, and every man his owne, and truth and Peace established in the Land, and a favourable regard had to the satisfaction of tender consciences.

April 29. 1647.

David Jenkins.

THE ARMIES INDEMNITY,

With Addition;

Together,

With a Declaration, ſhewing how every Subject of *England* ought to be tried for Treaſons, Felonies, and all other Capitall Crimes, as it is ſet downe in the Lawes of the LAND.

By *David Jenkins*, now Priſoner in the Tower of LONDON.

Printed in the yeare, 1648.

The Armies Indemnity, &c.

VPon the publiſhing of the Ordinance of the 22 of May laſt, for the Indemnity of the Army, certaine Gentlemen well affected to the peace of the Kingdome, and ſafety of the Army, deſired me to ſet downe in writing, whether by the Law of the Land, the ſaid Ordinance did ſecure them from danger, as to the matters therein mentioned: For whoſe ſatisfaction in a buſineſſe wherein the lives and fortunes of ſo many men were concerned, and the peace of the Kingdome involved, I conceived I was bound in duty and conſcience, faithfully and truely to ſet downe what the Law of the Land therein is, which accordingly I have with all ſincerity expreſſed in this following diſcourſe.

25. *Ed.* 3. c. 2.
2 *Ri.* 2. c. 3.
1 *Hen.* 4. c. 10.
1 *and* 2 *Phi. and Mary*, c. 10.

The danger of the Army by the Law of the Land is apparent to all men; It is high Treaſon by the Law of the Land to levy war againſt the King, to compaſſe or imagine his death, or the death of his Queene, or of

of his eldeſt Sonne, to counterfeit his Money, or his great Seale; They are the very words of the Law: Other Treaſons then are ſpecified in in that Act, are declared to be no Treaſons untill the King and his Parliament ſhall declare otherwiſe, they are the very words of the Law. King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treaſon, then there is declared; as appeares by the Lord Coke, in the places cited in the Margin; A Law-booke publiſhed by order of the Houſe of Commons this Parliament, as appeares in the laſt leafe of the 2. part of the Inſtitutes, publiſhed likewiſe by their Order.

3 *Part inſtit. pag* 12. *& 2 part inſtit pag* 47. 48. *and* 4. *part inſtit. p.* 23. 48. 29. 3 *part inſtit. cap.* Treaſon, *p.* 9, 10. *and* 12.

The Reſolutions of all the Judges of England, upon the ſaid Statute of the 25 Ed. 3. (as appeares in the ſaid third part of the Inſtitutes, Chap. High-Treaſon) have been, that to impriſon the King untill he agree to certaine demands is High-Treaſon; to ſeize his Ports, Forts, Magazine for War, are High Treaſon; to alter the Lawes is High Treaſon.

Mr. S. *John* the Solicitor in his ſpeech upon the arraignment of the Earle of *Strafford*, Printed by order of the Houſe of Commons. *pag.* 7. 13.

The word King in the Statute of 25 Ed. 3. c. 2. muſt be underſtood of the Kings naturall perſon; for that

perſon can onely dye, have a Wife, have a Son, or be impriſoned.

4 part inſtit. c. Parl. p. 25. The Priviledge of Parliament protects no man from treaſon or felony, howbeit he be a Member; much leſſe can they protect others: Thoſe who cannot protect themſelves, have no colour to make Ordinances to protect others who are no Members.

11 H. 7. c. 1. The Statute of 11 Hen. 7. cap. 1. doth by expreſſe words free all perſons who adhere to the King.

Stamford. l. 2. fol. 92. 18 Ed. 3. Statutes at large 144. 20. Ed. 3. c. 1. 11. Ric. 2 c. 10. 4 Pars inſtit. Pag. 23. 48. 29. The Army by an Act of Indemnity free themſelves from all thoſe dangers, which an Ordinance can no more doe then repeale all the Lawes of the Land, the whole and ſole power by Law to pardon all treaſons felonies, &c. being ſolely and wholly in the King, as is cleared by the Statute of 27 H. 8. c. 24. and the Law of the Land in all times.

Having ſhewed the danger of the Army by the Law of the Land, next conſider the Ordinance of the Lords and Commons publiſhed the 22 of May laſt for their Indemnity; by the enſuing diſcourſe it doth appeare they have no Indemnity at all thereby.

The Indemnity propoſed by the Ordinance, is for any Act done by the authority

authority of the Parl. or for the ſervice or benefit thereof; and that the Judges and all other Miniſters of Juſtice ſhall allow thereof.

This Ordinance cannot ſecure the Army for theſe reaſons.

1. Their Judges are ſworne to doe juſtice according to the Law of the Land, and therefore the Judges muſt be forſworne men if they obey it; becauſe an Ordinance of both Houſes is no Law of the Land, and no man can believe they will perjure themſelves ſo palpably and viſibly in the eye of the World. 3 *Part inſtit. Pag.* 22. 2 *part inſtit.* 47 48. 1 *part inſtit.* 193. Princes *caſe* 8, *reports.*

2. All trials for treaſons, felonies, robberies, and ſuch like capitall offences, are by the Law of the Land to be by indictment of a Jury appoynted out of the Neighbourhood where the offence was done. There is no common Jury-man but underſtands what the Law is in theſe caſes as well as the beſt Lawyers; and the Law makes the Jury Judges of the fact, whereby the ſouldier is left to their mercy whom he hath offended (as ſome of them have lately had woful experience and therupon doe righely apprehend their danger). Now no man can think that the Jurors will perjure themſelves to acquit the ſoldiers for robbing and plundring *Magna Charta cap.* 29. 25 *Ed.* 3. *c.* 4. 28 *E.* 3. *c.* 3. 37 *Ed.* 3. *c.* 8. 42. *E.* 3. *c.* 3.

Declaration of the Army preſented at *Walden*, and printed by the appointment of the Officers ſubſcribed.

plundring of the Countries ; and thereby utterly deſtroy their owne Rights and Properties.

3. If the Judges conceive (as they may) that the taking of other mens horſes or goods, is not by the Authority of Parliament, or for the ſervice and benefit thereof, the ſoldier dyes for it; they may ſay to ſteale or rob any man of his goods is not for the Parliaments ſervice but againſt it, which was alwayes the ſence of the people, and doubtleſſe the Jurors will not thinke otherwiſe.

4. This Ordinance is reſtrained to the authority, ſervice or benefit of the Parl. The Lords and Commons make no more a Parliament by the law of the Land then a body without a head makes a man; for a Parliament is a body compoſed of a King their head; the Lords and Commons the Members. All three together make one body, and that is the Parl. and no other; and the Judges may, ought, and I believe wil according to their oaths proceed as not bound at all by this ordinance. For it is reſtrained to the authority of Parl. ſervice or benefit thereof, whereas the two Houſes are not the Parl. but only parts thereof, and by the abuſe and miſunderſtanding

4 *Pars inſtit. pag.* 1.
3 *pars inſtit. pag* 22.
1 *pars inſtit. pag.* 1
28 *H.8 fol.* 11.
Dier 38 *H.8. fol.*60.
11. *H* 7 20.
1. *pars inſtit.* 159.
Princes caſe 8 Report.

ding of this word **Parliament**, they have miſerably deceived the people.

5. This Ordinance is againſt their Ordinance which expreſly prohibits plundring, and ſo there is one Ordinance againſt another, whereby their Judges have an out let to proceed on the one or the other, and thereby the Army hath no manner of ſecurity. 28. *Aug.* 1642 Col. of Ord. firſt part. 565. 592. 605 ſeverall Ordinances

6. The word Parliament is a French word (howbeit ſuch Aſſemblies were before the Norman Conqueſt heere) and ſignifies in that language to conſult and treat; that is the ſenſe of the word **Parler** in the French Tongue. The Writ whereby the two Houſes are aſſembled, which is called the writ of Summons of Parliament, at all times, and at this Parliament uſed, and which is the warrant, ground and foundation of their meeting, is for the Lords of the Houſe of Peeres, the Judges and Kings Counſell to conſult and treat with the King (that is the **Parler**) of great concernments, touching 1. the King, ſecondly, the defence of his Kingdome, thirdly, the defence of the Church of England. It cannot be a Parliament that will not parle with their King, but keepe him in priſon, and not ſuffer him to come to them and parle, and therefore the 1. *Pars inſtit.* 109. 1. *pars inſtit.* 110. 4. *pars* p. 49.

Law, and ſenſe, and reaſon, informing every man that is no manner of Parliament (the King with whom they ſhould parle, being ſo reſtrained that they will not parle with him) the Army hath no manner of ſecurity by this Ordinance; for their indemnification referres to that which is not in being untill the King be at Liberty.

The Common Souldiers ſecõd Apology. 6. Grievances of the Army publiſhed 15. *May* laſt. Three grievances of Col. *Riche's* Regiment.

7. It is more then Probable that their Judges before the laſt Circuite had inſtructions to the effect of this Ordinance; but they the Judges making conſcience of their Oath, laid aſide the ſaid inſtructions, and ought, and may, and it is believed will no more regard this Ordinance, then the ſaid inſtructions: What was done in the laſt circuit, the Army well knows, touching many of their fellow-Souldiers.

8. The Houſes in their firſt Propoſition to his Majeſty for a ſafe and well-grounded Peace, ſent to Newcaſtle to deſire a pardon from his Majeſty for themſelves: they who deſire a pardon, cannot grant a pardon (common reaſon dictates this to every man) and therefore that the Army ſhould accept an Indemnity for them, who ſeek it for themſelves, or ſhould conceive it of any manner of force, is a fancy: ſo that no man in the whole Army but may apprehend, that it is vaine and a meere deluſion

9. His Majeſty by his gratious meſſage of the

the 12. of *May* laſt, hath offered an Act of Oblivion, and a generall pardon to all his people, this done the Law doth indemnifie the Army (without all manner of ſcruple) for any thing that hath been done; for it is an Act of Parliament, when the King and two Houſes concurre, and binders all men. There is no ſafety by the Ordinance; There is ſafety by an act of Parliament: And will not reaſonable men preferre that which is ſafe before that which is unſafe.

10. His Majeſty by his ſaid Letter agrees to pay the arreares of the Army; I am ſure that it is a Publick Debt, and the chiefeſt and the firſt that by the two Houſes ſhould be paid, and before any Dividend or gratuities beſtowed among themſelves; for their blood, limbes, and lives have put and kept the both Houſes at reſt in the power they have: So by this concurrence of his Majeſty for your indemnity, and for your arrears, the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make ſure unto them their Indemnity for all Acts, and for their Arreares, and therewith alſo bring peace to the Land.

11. The Kingdome and people generally deſire theſe things. To ſuch an Army, juſt and reaſonable things muſt not be denyed; the things formerly propoſed are moſt juſt and reaſonable, you may have them if you will; if you will not, you render this Kingdome miſerable, wherein you will have your ſhares of miſeries: The head and the body are ſuch an incorporation as can not be diſſolved without the diſtruction of both.

Mr. *Pyms* Speech againſt the Earle of *Strafford* p. 16. Sixt conſiderations printed by the command of the Houſe of Commons.

The Additional Ordinance of both Houſes paſſed the fifth of *June* inſtant for the fuller indemnity of the Army, makes nothing at all to the matter. 1. For that extends not to

to Felony, Homicide, Burglary, Robbery, or any other capitall crime, which is the maine buſineſſe inſiſted upon, and moſt concerneth the Souldiers ſecurity.

12. The both Houſes in the ſaid additionall Ordinance, ſay, that it is expedient that all offences be pardoned and put in oblivion pardon & oblivion cannot be underſtood to be for a time, but for ever; and they themſelves confeſſe, that an Ordinance is not binding but *pro tempore*, which with the moſt advantagious interpretation can be but a reprieve or delay of the execution of the Law, and therefore that cannot pardon or put in obhvion by their owne ſhewing.

27. H 8. c. 24. But the Law of the Land is, (and ſo it hath conſtantly been practiſed in all times) that no perſons of what eſtate ſoever have any power to pardon treaſon, felony, or any other offences but the King only, who hath the ſole and whole power to pardon all ſuch crimes whatſoever. And in the ſame manner an Ordinance is of no Authority at all to take away the right of private mens actions, by any evidence it can give; in truth all the evidence that this Ordinance will give is, that it records to poſterity nothing but a lawleſſe and diſtempered time.

For remedy thereof I ſay againe, it is a certaine truth, this Kingdome without an act of Obhvion and a generall pardon, and the payment of Souldiers arrearcs, and a meet regard had to tender conſciences, will unavoydably be ruined.

June 10. 1647.

DAVID JENKINS
Priſoner in the Tower of
LONDON.

Sundry

Sundry Acts of Parliament mentioned and cited in the Armies Indemnities: set forth in words at large for the better satisfaction of such as desire to bee rightly informed.

25. Edw. *Chap.* 2.

A Declaration what offences shall be adjudged Treason.

WHereas divers opinions have been before this time, in what case Treason shall be said, and in what not: The King at the request of the Lords and of the Commons hath made a Declaration in the manner as hereafter followeth:

That is to say, When a man doth compasse, or imagine the death of our Lord the King, or of our Lady the Queen, or of the eldest Sonne and Heire: or do violate the Kings companion, or the Kings eldest daughter unmarried, or the wife of the Kings eldest Son and Heire; or if a man doe levy War against the Lord our King in his Realme, or be adherent to the Kings enemies in his Realm, giving to them aid and comfort in the Realm, or elsewhere, and thereof be probably attainted of open deed by people of their condition: And if a man counterfeit the Kings great or privie Seal, or his mony: and if any man bring false mony into this realm, counterfeit to the mony of England, and the mony called Lusburgh, or otherlike to the said mony of England, &c.

11. Hen. 7. Chap. 1.

None that ſhall attend upon the King, and doe him true ſervice, ſhall be vttainted or forfeit any thing.

THe King our Soueraign Lord calling to remembrance the duty of Allegiance of his Subiects of this his Realm, and that they by reaſon of the ſame are bound to ſerue their Prince and Soueraigne Lord for the time being in his Warrs, for the defence of him and the Land, againſt euery rebellion, power, and might raiſed, reared againſt him, and with him to enter and abide in ſeruice in battell, if cale ſo require, and that for the ſame ſeruice what fortune euer fall by chance in the ſame battell againſt the minde and will of the Prince (as in

this Land ſometime paſſed hath
been ſeen) that is not reaſonable,
but againſt all laws, reaſon and
good conſcience, that the ſaid ſub-
iects going with their Soue-
raign Lord in Wars, attending
upon him in his perſon, or being
in other places by his cõmande-
ment within this Land or with-
out, any thing ſhould loſe or for-
feit, for doing their duty or ſer-
vice of Allegiance. It be there-
fore ordained, enacted and eſta-
bliſhed by the King our Soue-
raign, by the advice & aſſent of
his Lords Spirituall and Tem-
porall and the Commons in this
preſent Parliament aſſembled,
and by authority of the ſame, that
from henceforth no manner of
perſon or perſons whatſoeuer he
or they be, that attend upon the
King and Soueraign Lord of
this land for the time being, in
his perſon, and do him true and
faithful ſervice of Allegiance in
the ſame, or be in other places by
his commandement in his
wars within this land, or with-
out, that for the ſaid deed and

true

true duty of Allegiance hée or they be in no wise convict or attaint of high treason, nor of other other offences for that cause, by Act of Parliament, or otherwise by any processe of law whereby he or any of them shall lose or forfeit life, lands, tenements, rents, possessions, hereditaments, goods, chattels, or any other things, but to be for that deed and seruice utterly discharged of any other things, but to be for that deed and seruice utterly discharged of any veration, trouble, or losse. And if any Act or Acts, or other processe of the Law hereafter thereupon for the same, happen to be made contrary to this Ordinance, that then that Act or Acts, or other processe of Law, whatsoeuer they shall be, stand and be utterly void. Prouided alwaies, that no person or persons shall take any benefit or aduantage by this Act, which shall hereafter decline from his or their said Allegiance.

H. 8. It is enacted, that no perſon or perſons of what eſtate or degree ſoever they be of, ſhall ſhall haue any power or authority to pardon or remit any treaſon, murders man-ſlaughters, or any kind of Felonies, &c. but that the King ſhall haue the ſole and whole power and authority thereof united and knit to the Imperiall Crown, as of right it appertaineth, &c. And in the ſame Statute it is enacted further, That none ſhall haue power, of what eſtate, degree or condition ſoever they be, to make Juſtices of Eyre, Juſtices of Aſſize, Juſtices of Peace, &c. but al ſuch Officers & Miniſters ſhal be made by Letters patents vnder the Kings great Seal in the name and by the authority of the King and his Heires and Succeſſors Kings of this Realm.

In the firſt year of Queen Mary, and the firſt Chapter, It is enacted by the Queen, with the conſent of the Lords and Commons, That no deed or offence, by

by act of Parliament made treaſon, ſhall bee taken, deemed, & adjuged to bee high Treaſon, but only ſuch as be declared and expreſſed to be Treaſon by the Act of Parliament made 25. Ed. cap. 2. before mentioned.

A Declaration of Mr. *David Jenkins*, now Priſoner in the Tower of *London*, one of His Majeſties Iudges in *Wales*, for tryalls of Treaſons, Murthers, Felonies and all other capitall crimes, that they ought only to be by Iuries, & not otherwiſe, unleſs it bee by Act of Parliament.

THe Common Law of this Land is, That every freeman is ſubject to a tryall by bill of Attainder in Parliament, wherein His Majeſty and both Houſes muſt neceſſarily concurre, for that tryall and attainder is an **Act of Parliament** to which all men are ſubject to.

a No man ſhall otherwiſe be deſtroyed, &c. but by the lawfull judgement of his Peers, or by the common Law of the Land. Peers to Noblemen are Noblemen, Peers to the Cõmons are Knights, Gen. &c. Judgement

a Mag. Chart. 29. 2 part. inſtit. fol. 28. 29. 46, 48, 49 50, compo.

ment of Peers refers to Peers, thoſe words, **The Law of the Land**, refers to the Commons; the Law of the Land is for the tryall of the life of a free Commoner, by indictment, Preſentment of good and lawfull men where the deed is done, or by Writ originall of the common Law, all this is declared in *Magna Charta* c. 29. and by 25. *Ed.* 3. c. 4 28. *Ed.* 3. c. 3. 37 *Ed.* 3. c 8. 42. *Ed.* c. 3 If the Lords will try any man by an Ordinance, they deſtroy that exccellent Act of *Magna Charta*, and all thoſe other good Laws.

ſed by Sir Ed. Cook and publiſhed by the Order of the Houſe of Commons in May 1641. 4 parts inſtitut. fol. 41. 356.

Sir **Simon de Bereford** a free Commoner of **England** was condemned by the Lords to death by an Ordinance, which after the Lords better conſidering the matter, that they might be acquitted of that ſentence, became ſuters to the King, that what they had ſo done in future time might not be drawn into preſident, becauſe that which they had ſo done was againſt the Law, *b* with this agrees the practice and uſage of all times in this Land, all the free Commoners of this Kingdom have alwayes been tryed and acquitted or condemned in capitall cauſes by Jurers of their equals.

b Rot. Par. 1 roul 4. B. 8. Num. 2. pare inſt. page 30 with this agrees Sir Iohn Lees caſe, Rot. Par. 42. E. 3. Num. 11. 23 2. inſt. fo. 50

An Ordinance bindeth not in Law

c See 4. part inst. fol. 23. 48. 232. 298. 292. 2. part. inst. fol. 47 48. 137. 643 4. H. 7. f. 18. 1 H. 7. f. 14. 3 part inst. fol: 41.

at all, c and but *pro tempore*, as the two Houses now affirme, a mans life cannot be tryed by that which is not binding, and to continue for all times, for a life lost cannot be restored.

By an Act of Parliament of the 1. and 2. of *Philip* and *Mary*, cha. 10. It is enacted that all tryalls for Treason hereafter to be had, shall be according to the course of the common Law and not otherwise.

If the crime charged upon any be treason against the two Houses (against the Parliament it cannot be, for there is no Parliament without the King) **that is no Treason in Law**, as appears by 25. *Ed.* 3. *chap.* 2. 11. R. 2. *chap.* 3. 1 *Hen.* 4. *cha.* 10. 1. and 2. *Philip and Mary*, *chap.* 10. 3 *part of the Institutes Page* 23.

An Act of Parliament to make any a Judge where he is party, is a void act, d for none can be a Judge and party in the same cause, and therefore the House of Peers being a party touching the crime charged upon any man, whom they would try by an Ordinance for Treason against both Houses, cannot be a Judge.

d Dr Bonams case 8. part of Cooks reports.

By the Petition of Right, e if any man deserve death he ought to suffer the

e Petition of Right. 3. Car. Regis.

the ſame according to the Lawes of the Land eſtabliſhed, and not otherwiſe; but an Ordinance of the Lords is no eſtabliſhed law.

The Proteſtation, the Vow and Covenant, the ſolemne League and Covenant, the Declarations of both Houſes, had, made and publiſhed ſithence this unnaturall Warre, are amongſt other things ſworn and ſet down to be for the maintenance of the Lawes, the people of this land ought to enjoy the benefit of their Birth-right the Law of the Land, and the making good of the ſaid Proteſtation, Vow and Covenant, League and Covenant, and Declarations, otherwiſe truth muſt be ſaid and will be ſaid, that there is brought in a new arbitrary and tyrannicall government.

If the Lords have taken one mans life by an Ordinance, they are not bound to take any more, and the caſe differs in caſe any appeale be made from a tryall by Ordinance to a tryall at common law, which was not done by that man whoſe life was taken away by an Ordinance.

The Lords ought to remember, that his Majeſty and his Progenitors have made them a houſe of Peers, they are truſted to counſell him in peace,

f Nevels case 8 part Cooks reports,

f and defend him in war, his Majesty in Parliament is to consult and treat with the Peers, and with his Counsell at Law, Judges, his Sergeants, Atturney, and Solicitor, and Masters of the Chancery, the Lords and that counsell by the respective Writs of Summons to Parliament are to give Counsell, g the house of Commons by their Writ to performe and consent.

g 4 Pars instit. fol. 4. 9 27. Ed. 3. cap. 1. 15. 3 part instit. Fol. 135 h 1 H. 7. fol. 20. * 14. E. 3. c. 5

In the house of Lords, the Court of Parliament onely is, for they onely examine upon oath, h with them, the King in person sits, and by them there erroneous judgements * (upon a Petition to his Majesty for obtaining of a Writ of Errour) by the advice of the Judges are reversed, or affirmed, &c. The lords are to remember that their eminency and grandeur is preserved by the Laws, if they leave all to will, and dishonour their King, and make nothing of the Laws, they will make nothing of themselves in the end.

And therefore, it is well worth your observation what was said by Mr *Iohn Pym* a Member of the House of Commons in his speech against the Earle of *Strafford*, in the beginning of the Parliament, which speech is published by the expresse order of the House

Houſe of Commons, the words are theſe. *The Law is that which puts a difference betwixt good and evill, betwixt juſt and unjuſt, if you take away the Law, all things will fall into a confuſion, every man will become a Law unto himſelfe, which in the depraved condition of humane nature muſt needs produce many great enormities: Luſt will become a Law, and envy will become a Law, Covetouſneſſe and Ambition will become Lawes, and what dictates, what deciſions ſuch Lawes will produce, may eaſily be diſcerned, &c.* They that love this Common-wealth as things now ſtand, will uſe all means to procure and Act of Oblivion, a generall pardon from his Majeſty, the Souldiers their Arrears, and tender conſciences a juſt and reaſonable ſatisfaction, elſe we all muſt periſh, firſt or laſt.

iSee 1 part. book decl. pag. 140. 163.

Mai. 17. 1647.

Gods preſerve His Majeſty, and the Lawes wherein their Lordſhips and the whole Kingdome are conſerned.

David Ienkins priſoner in the Tower of *London.*

THE

THE CORDIALL OF Iudge Ienkins For the good People of LONDON.

In reply to a Thing, called, An Anſwer to the poyſonous ſeditious Paper of M. *David Jenkins*, By *H.P.* Bariſter of Lincolns-Inne.

Printed in the Year, 1647.

The Gordiall of *Iudge Jenkins*, for the good People of LONDON.

AFter the ſaid Mr. *H.P* hath made a recitall of the Heads of my *Vindication*, hee deduced his Anſwer unto theſe eight particulars, which follow *verbatim*.

1.

It cannot be denyed, but the Parliament *ſits by the* Kings *writ, nay if Statute Law bee greater then the* Kings *writ, it cannot be denyed but the* Parliament *ſits, or ought to ſit by ſomething greater then the* Kings *writ: And if it be confeſſed that the* Parl. *ſits by the Kings writ, but does not act by the Kings Writ, then it muſt follow that the* Parliament *is a void vain Court, and ſits to no purpoſe; nay it muſt alſo follow, that the* Parliament *is of leſſe authority, and of leſſe uſe then any other inferiour Court; forasmuch as it is not in the* Kings *power to con-*

controule other Courts, or to prevent them from sitting or acting.

3.

This is a grosse non sequitur, *the Kings power is in himselfe*; Ergo, *it is not derived to, nay does reside vertually in the* Parliament. *For the light of the Sunne remains imbodied, & exuuhausted in the Globe of the Sun, at the same time as it is diffused and displayed through all the body of the ayre*; *and who sees not that the King, without emptying himselfe, gives Commissions daily of Oyre and Terminer to others, which yet himself can neither frustrate nor elude? but for my part I conceive it is a great errour to infer that the* Parliament *hath onely the Kings power, because it hath the Kings power in it: for it seemes to me, that the* Parliament *does both sit and act by concurrent power, devolved both from the King and Kingdome*; *and in this some things are more obvious and apparent then in others. For by what power does the* Parliament *grant Subsidies to the King? if only by the power which the King gives, then the King may take Subsidies without any grant from the Parliament*: *and if it bee so by a power, which the people give to the Parliament*; *then it will follow, the*

Parlia-

Parliament hath a power given both by King and Kingdome.

3.

The ſending Propoſitions to the King, and deſiring his concurrence, is ſcarce worth an Anſwer; for Subjects may humbly petion for that which is their ſtrict right and property. Nay it may ſometimes beſeem a ſuperiour to prefer ſuite an inferiour for matters in themſelves due. God himſelfe hath not utterly diſdained to beſeech his own miſerable, impious, unworthy creatures; beſides, 'tis not our Tenet, that the King hath no power, becauſe he hath not all power, nor that the King cannot at all promote our happines, becauſe he hath no juſt claime to procure our ruine.

4.

We affirm not that the, Kings power is ſeparated from his Perſon, ſo as the two Spencers affirmed, neither doe we frame concluſions out of that ſeparation, as the two Spencers did, either that the King may be removed for miſdemeanours, or performed per aſperté; *or that the Subjects is bound to govern in ayd of him; we only ſay, that his power is diſtinguiſhable from his perſon*

perſon, and when he himſelfe makes a diſtinction betwixt them, commanding one thing *by his Legall Writs, Courts and Officers, and commanding* another thing *extrajudicially by word of mouth, Letters, or Miniſters, wee are to obey his power rather then his perſon.*

5.

we take not from the King *all power of pardoning Delinquents, we only ſay it is not proper to him* quarto modo: *For if the* King *pardon him who*[b] *hath murthered my ſon, his pardon*[n] *ſhall not cut me off form my appeale; and 'tis more unreaſonable, that the* Kings *pardon ſhould make a whole State which hath ſuffered remedileſſe, then any private man. So if the* King *ſhould deny indemnity to thoſe which in the fury of war have done things unjuſtifiable by the Lawes of* Peace, *and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity ſhould be made forcible another way. And if his will not hold, yet this is no good conſequence, the* King *is abſolute in point of pardons, therefore hee is abſolute in all things elſe; and the Parliament hath no power to diſcharge De-*

lin-

ſinquencies, therefore it hath no power in other matters.

6.

The Parliament hath declared the King *to be in no condition to Govern: but this muſt not be interpreted rigidly, and without diſtinction; for if the* King *with his ſword drawn in his hand, and purſuing the Parliament and their adherents as Rebels, be not fit for all Acts of Government, yet 'tis not hereby inſinuated that he is diveſted of the habit or right of Governing: If he be unqualified now, he is not unqualified for the futer; if he may not do things deſtructive to the Parliament, he is not barred from returning to the Parliament, or doing juſtice to the Parliament. This is a friuolous cavil, and ſubterfuge.*

7.

We ſweare, that the King *is our ſupreme Governour over all perſons, and in all cauſes; but we doe not ſweare he is above all Law, nor above the ſafety of his people, which is the end of the Law, and indeed Paramount to the Law it ſelfe. If he be above Law, or liable to no reſtraint of our Law, then we are no freer then the*

French

French or the Turks; and if he be above the prime end of Law, common safety, then we are not free as the French or Turks: For if the totall subversion of the French or Turk were attempted, they might by Gods Law, imprinted in the Book of Nature, justifie a self-defence; but we must remediles perish, when the King pleases to command our throats. Besides, how atchieved the King of England such a Supremacy above all Law and the community it selfe, for whose behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend to, then to what purpose serve our Lawes, nay, to what purpose serve the Lawes of other Countries? for by this generall donation, all Nations are condemned to all servitude as well as we, if the Law of this Land be appealed to, what book hath Mr. Jenkins read, where hath he found out that Lex Regia, whereby the people of England have given away from themselves all right in themselves? Some of our Books tell us, that we are more free then the French; that the King cannot oppresse us in our persons or estates, by imprisonment, denying justice, or laying Taxes without our

our conſents: other Books tell us, that the ſafety of the people, is the ſupreme Law, and that the King hath both God and the Law for his Superiour. But all this is nothing to learned Mr. Jenkins.

8.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings aſſent: yet this is ſtill to be denyed, that therefore without this aſſent particularly expreſs, the two Houſes can doe nothing, nor have any virtuall power at all, no, not to examine Mr. Jenkins, *nor to doe any other thing of like nature, though in order to publik juſtice and ſafety. I have done, and wiſh M.* Jenkins *would call in and lick up againe his black infamous execrable reproaches, ſo filthily vomited out againſt the Parliament.*

To the firſt.

I Was examined by a Committee appointed by the Houſe of Commons: I ſay and ſaid that the Houſe of Commons have no power to examine me, for that it is no Court; every Court hath power to exa-

French or the Turks; and if he be above the prime end of Law, common ſafety, then wee are not free as the French or Turks: For if the totall ſubverſion of the French or Turk were attempted, they might by Gods Law, imprinted in the Book of Nature, juſtifie a ſelf-defence; but we muſt remedileſſly periſh, when the King pleaſes to command our throats. Beſides, how atchieved the King of England ſuch a Supremacy above all Law and the community it ſelfe, for whoſe behoofe Law was made? If Gods donation be pleaded, which is not ſpeciall to him, or different from what other Kings may pretend to, then to what purpoſe ſerve our Lawes, nay, to what purpoſe ſerve the Lawes of other Countries? for by this generall donation, all Nations are condemned to al ſervitude as well as we, if the Law of this Land be appealed to, what books hath Mr. Jenkins read, where hath he found out that Lex Regia, whereby the people of England have given away from themſelves all right in themſelves? Some of our Books tell us, that we are more free then the French; that the King cannot oppreſſe us in our perſons or eſtates, by impriſonment, denying juſtice, or laying Taxes without

our

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I Was examined by a Committee appointed by the Houſe of Commons: I ſay and ſaid that the Houſe of Commons have no power to examine me, for that it is no Court; every Court hath power to exa-

examine upon Oath; this power the House of Commons never claimed: The Court of *Pie-powders*, *court Baron*, *Hundred Court*, *County Court*, and every other Court of Record, or not of Record, hath power to examine upon oath: and an examination without Oath is a communication onely; examination in Law is upon Oath.

5 H. 4 c. 3.
3 H. 6. 46.
19 H. 6. 43.
35 H. 6. 5.

There is no Court without a power of tryall; the house of Commons have no power to try any offence, nor ever practised it by Bill, Inditement, Information Plaint, or Originall, Writt, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon Oath, without which there can be no condemnation or judgement; and that which can attaine to no reasonable end, the Law rejects as a thing *inutile* and useless; *Sapiens incipi ta fine.*

Sir Anthony Maynes case.
Cook 5. pars, Reports, Lit. 2. lib. Sect. 194. 6. H. 4. 1.

The Writ whereby they are called gives them power, *Ad faciendum & consentiendum*; to what? to such things *Quæ ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the house of Commons; that *consilium* which that Writ intends, is cleared partly by the

4 pars, instit. fol. 4. & 9.

Writ

Writ for chuſing Knights, &c. For the King by that Writ is ſaid to reſolve to conſult and treat with the Prelates and Peers of the Kingdome, for and touching the great concernments of the Common-wealth (for the King never ſits in the Houſe of Commons;) and this alſo is made evident by the Writs to the Prelates, Peers, Judges, and to his Counſell at Law; The words in their Writ are; *To appear and attend the Parliament, conſilium impenſuri*, the one doth *conſulere*, the other *facere et conſentire.*

The Houſe of Lords, where the King ſits in perſon, aſſiſted by his Lords, Judges, Serjeants, Attorney, Sollicitor, Maſters of the Chancery, is a Court of Record to many purpoſes, ſet down in the Bookes of Law, and the Statutes of the Land, and that Court is only in the Houſe of Lords, where the King ſits. 7 H. 6. 28. 1 H. 7. 20. 13. E. 3. ca. 5 4. pars, inſtit. pag. 31.

A Court muſt either be by the Kings Patent, Statute Law, or by the Common Law, which is common and conſtant uſage; the Houſe of Commons hath no Patent to be a Court, nor Statute Law to be a Court, nor common uſage; they have no Journall Book, but ſince E. 6. time: was there ever Fine by the Houſe of Com- Plowd. Com. 319.

Commons eſtreated into the Exchequer? For murder or Felony they can impriſon no man, much leſſe for Treaſon; that Houſe which cannot doe the leſſe, cannot doe the greater.

25. E. 3. c. 4. 3. Car. Petition of Right

It is ordained, that no man ſhall be impriſoned or put out of his Franchiſe by the King or his Councell, but upon Indictment or preſentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and ſo is *Lex terræ* the Law of the Land mentioned in *Magna Charta*, cap. 29. expounded, and the ſaid *Magna Charta*, and *Charta de Foreſta* are declared by the Stat. of 25. E. 1. c. 1. to bee the Common Law of the Land. All Judges and Commiſſioners are to proceed *Secundum legem & conſuetudinem Regni Angliæ*, as appeares by all proceedings in all Courts, and by all Commiſſions: and therefore the Houſe of Commons by themſelves, proceeding not by Indictment, Preſentment, or Original Writ, have no power to impriſon men or put them out of their Franchiſe.

4. pars, inſtit. pag. 1
2 Pars, Inſtit. p. 23.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houſes; I have onely in my Paper deli-

delivered to M. *Corbet*, applyed my ſelfe to that Committee, that had no power to examine me, but I never thought, ſaid, or wrote, that the Parliament had no power to examine me: the Law and cuſtome of this Land is that a Parliament hath power over my life, liberty, lands and goods, and over every other ſubject, but the Houſe of Commons of it ſelf hath no ſuch power.

12. H. 7. 10. Princes Caſe, 8 Parts Cook. 1 Part, Inſtit. p. 159. 14. H. 8. 3. Dier, 28. H. 8. 60.

For the Lord *Cooks* relation, that the Houſe of Commons have impoſed Fines, and impriſoned men in Queene *Elizabeths* time, and ſince; Few facts of late time never queſtioned, make no power power nor Court; *à facto ad jus* is no good argument; for the words of the Statute of 6. H 8 c. 16. that a licence to depart from the Houſe of Commons for any Member thereof, is to be entred of Record in the Book of the Clerk of the Parliament, appointed, or to be appointed for that Houſe, doth not conclude that the Houſe of Commons is a Court of Record.

1 Part, Inſtit. 19 b. 4. Pa. Inſt. c. Parl. Hobbarts reports fol. 152.

For firſt, that Law of 6 H. 8. c. 26. handles no ſuch queſtion, as that, whether the Houſe of Commons be a Court; it is a maxime in all Lawes, *Lex aliud tractans nil probat*, the word

Hobbarts reports fol. 154.

(*Record*) there mentioned, is onely a memoriall of what was done and entred in a book: A Plaint removed out of the County-Court to the Court of the Common-Pleas, hath theſe words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the County Court is no Court of Record; and ſo for ancient Demeſne in a Writ of falſe judgement, the words are *Recordari facias loquelam, &c.* and yet the Court of ancient Demeſne is no Court of Record; and ſo of a Court Baron, the Law and cuſtome of *England* muſt be preſerved, or *England* will be deſtroyed, and have neither Law nor cuſtome.

Fitz. Nat. Br. 70. Fitz. Nat. Br. 13. 12. H. 4. 33. 34. H. 6. 49.

Let any man ſhew me, that the Court of Lords, or the Houſe of Commons in any age hath made any man a Delinquent (*Rege diſſentiente*) the King contradicting it under his Great Seale. *Michell*, and others of late were condemned by the proſecution of the Houſe of Commons in K. *James* his time; did King *James* ever contradict it? And ſo of ancient times, where the Houſe of Peeres condemned the Lord *Latimer* in 50. *E.* 3. The Kings pardon freed him: which ſhewes cleerly, that the Kings expreſſe or implied aſſent muſt of neceſſi-

4. Rars, Inſtit. Tit. Parliam. pag. 23.

ceſſity be had to make a Delinquent. The execution of the ſentence is in the Kings name.

The Gentleman ſaith, *That the Parliament ſits, or ought to ſit by ſomething greater than the Kings writ, &c.*

No Parliament did ever ſit without the Kings Writ, nor could ever Parliament begin without the Kings preſence in perſon, or by a Guardian of *England* by patent under the Kings Great Seale, the King being *in remotis*, or by Commiſſion under the Great Seale to certain Lords repreſenting the Kings perſon, and it hath been thus in all Ages unto this Seſſion of Parliament, wherein his Majeſty hath been preſent, and hath paſſed two acts of Parliament, one for a Trienniall Parliament, and another for a perpetuall, if the Houſes pleaſe, to ſatisfie their deſires; how theſe two Acts agree one with another, and with the Statute in *Ed.* the thirds time, where Parliaments are ordained to be holden every yeare, and what miſchiefes to the people of this Land ſuch length of Parliaments will produce by protections and priviledges to free them and their meniall ſervants from all debts during their lives, if they pleaſe to continue it ſo long, and

4 Pars. Inſt. p. 4. and 6.

4 E 3 c. 14. 36. E. 3. c. 10 21. Iac. the Act of Limitation of Actions, cap. 22.

how deſtructive to mens actions againſt them, by reaſon of the Statute of Limitations, which confines their actions to certain years, and many other inconveniences of greater importance, is eaſie to underſtand.

How can any man affirme, that the two Houſes of Parliament doe act now by the Kings Writ, which relates to Councell and Treaty with the King, concerning the King, the defence of his Kingdome and of the Church of *England*, theſe are three points which it tends to, as appeares by the Writ. They keepe their King priſoner at *Holmby*, and will not ſuffer him to conſult and treat with them. They have made a Vow & a Covenant to aſſiſt the forces raiſed & continued by both *Houſes* againſt the forces raiſed by the King without their conſent and to the ſame effect have deviſed the Oath which they call the *Negative Oath*: Is this to defend the Kings Kingdom, or their kingdome?

4 pars, Inſt. p. 14. Vow and Covenant, p. 11.

When by their Solemne League and Covenant they extirpate Biſhops, Deans and Chapters root and branch, is this to defend the church of *England*? (that Church muſt neceſſarily be meant, that was the Church of *England* when the ſaid Writ bore teſt)

3 pars, Cook Dean and Chapter of Norwich.

they

they were not ſummoned to defend a Church that was not in being; to deſtroy and defend the Church are very contrary things; the Church is not defended, when they take away and ſell the Lands of the Church.

The Gentleman ſaith, *The King cannot controule other Courts of Juſtice, or prevent them from ſitting, or acting, and therefore not the two Houſes, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Juſtice, to adminiſter common right unto all men, according to the fixed Laws. The Houſes make no Court without the King, they are no body corporate without the King, nor Parliament without the King, they all make one corporate body, one Court called the Parliament, whereof the King is the head, and the Court is in the Lords Houſe, where the King is preſent: and as a man is no man without a head, ſo the houſes ſevered from the King, as now they are, have no power at all, and they themſelves by levying war againſt the King, and impriſonning of him, have made the Statute for not diſſolving, adjourning, or proroging this Parliament of no effect, by the ſaid Acts of their own;

14 H. 8. 3.
36 Hen. 8. Dier. 60.
4 Pars, inſt. p. 1.

they

they ſit to no purpoſe without his aſſent to their Bills, they will not ſuffer him to conſult with them, and treat and reaſon with them, whereby Hee, may diſcerne what Bills are fit to paſſe, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they ſit to no purpoſe by their own diſobedience and fault.

27H.8.c.24. 28H.8.21. Dier.

For the ordinary Courts at *Weſtminſter*, the Judges in all thoſe Courts are Judges by the Kings Patent or Writ, otherwiſe they are no Judges: the Houſes can make no Judges, they are no Judges at all who are made by them; the whole and ſole power of making Judges belongs to the King: the King cannot controule or prevent his owne Judges from ſitting and acting, but the Houſes He may, for they are not the Kings Judges but the Judges of the 2. Houſes. In his other Courts, the King commits his power to his Judges by his Patent, and they are ſworn to doe common right to all men, and the King is ſworn not to let them from ſo doing, the King cannot judge in thoſe Courts, nor controule; but the King is both Judge and Controuler in the Court of Parliament: *Quoad* Acts for his aſſent or diſſent doth give life

2 R.3.21.

er

or death to all Bills. Many Lawyers have much to anſwer to God, this Kingdome, and to Poſterity, for puzling the people of this Land with ſuch Fancies, as the Gentleman who wrote the Anſwer to my Paper, and others have publiſhed in theſe Troubles, which hath been none of the leaſt cauſes of the raiſing and continuing of them: And ſo I have done with the firſt part of this Anſwer.

AN. 2.

For the *Non ſequitur*, in the ſecond Section of the Gentl. Anſwer, the Antecedent and the Conſequent are his own.

(libellus:
Quem recitas meus eſt (ô Fidentine!)
Sed male dum recitas incipit eſſe tuus.

My words are, that the King is not virtually in the two Houſes at *Weſtminſter*, to enable them to grant pardons, for that whole and ſole power by the Law belongs to the King: My paper hath no ſuch thing, as that the Kings power cannot bee derived to others, or the vertue of his power: For his power and the vertue of his power, is in all patents to his Judges, in Charters to Corporations, in Commiſſion 27 H. 8. c. 24

miſſions of all ſorts, and in the Parliament aſſembled by force of his Writ of Summons, ſo long as they obey him: but when they renounce that power, and claime it not from the King, and declare to the Kingdome that he is not in condition to Govern, and impriſon him, and uſurp to themſelves all Royall Authority, as the two Houſes now doe, no reaſonable man can affirme that they Act by the power of their priſoner, who hath no power to give them, that by force of armes take all power to themſelves.

The Gent. ſaith, The *King grants Commiſſions daily of* Oyre and Terminer, *which he cannot fruſtrate nor elude.* The King may revoke and diſcharge the commiſſion by his Writ, as hee may remove all Iudges, and place other men in their roome; and any Kings death determines all the Iudges Patents at *Weſtminſter* Hall, Commiſſion of *Oyre* and *Terminer*, &c. and ſo he might diſſolve both houſes in all times by his Writ under the Great Seale, untill that in this Parliament, by his own conceſſion, the King of his goodneſſe hath ſecluded himſelfe; which goodneſſe hath been full ill requited.

4 E. 4. 39.
5 E. 4. 4.
1 Eliz. Dyer 265.
1 Mar. Brooks caſe 447.

The

The Gentl. affirms, *That the power the warliament hath is concurrent from the King and Kingdome*; which, he conceives is proved by the grant of Subſidies to the King by the Parliament. The miſtaking of this word (*Parliament*) hath been miſchievous in theſe times to this Land, and it is affectedly miſtaken, which makes the ſinne the greater, for the two Houſes are not the Parliament, as before is declared, and at this time ſo to inculcate it; when all men know, that of the 120. Peers of the Kingdom, who were Temporall Peeres before the Troubles: there are now not above 30. in the Lords Houſe, and in the Houſe of commons about 200 of the principal Gent. of the Kingdom left the Houſe and adhered to his Majeſty, who is impriſoned by them ſhewes no ſuch candor as is to be deſired. 4 pars, inſtit. pag.

It is true that no Tallage can bee layd upon the people of this Land but by their conſent in Parliament, as appeareth by the Lawes mentioned in the Margent; but you ſhall find in M. *Seldens* learned Booke, called *Mare Clauſum*, a number of preſidents in *Henry* the Thirds time for Ship-mony juſtly condemned this Parliament, to the which his Majeſty aſſented; and in truth

25 E. 1. confirmatio chartarum chap. 6. 34 E. 1. c. 1. de Tallagio non concedendo.

truth that Ship-mony was condemned before by the ſaid two Statutes of 25. E. 1. & 34. E. 1. *de Tallagio non concedendo. Dangelet, Engliſhety*, and many greivous burthens were layd upon the people and borne, untill that memorable Princes time. But I am of opinion that the Common Law of the Land did alwayes reſtraine Kings from all Subſidies and Tallages, but by conſent in Parliament; which doth appeare by *Magna Charta* the laſt chapter, where the Prelates, Lords, and Communalty gave the King the fifteenth part of their moveables. In truth it is no manner of conſequence, becauſe the King cannot take what he pleaſeth of the Subjects goods, that therefore they have a concurrent power in Parliament: there have been many Parliaments and no Subſidies granted; Parliaments may be without Subſidies but Subſidies cannot be without Parliaments: of antient times Parliaments rarely granted any, unleſſe it were in the time of forraine Warres; and in my time, Queen *Elizabeth* refuſed a Subſidy granted in Parliament, and in the Parliament of 1 *Jac.* none were granted. The Gentl. ſhould make a conſcience of blinding the people with ſuch untrue colours,

lours, to the ruine of the King, and people.

AD 3.

The Gentl. affirmes, *That the ſending Propoſitions to the King, and deſiring his concurrence, is ſcarce worth an anſwer, for Subjects may humbly petition for that which is their ſtrict right and property, &c.* The Propoſitions ſent to *Newcaſtle*, are in print; wherein the two Houſes are ſo farre from humbly petitioning, that they ſtile not themſelves his Majeſties Subjects, as appeares by the Propoſitions.

That they have a ſtrict right or property to any one of theſe Propoſitions is a ſtrange aſſertion, every one of them being againſt the Lawes now in force. Have the two Houſes a ſtrict right and property, to lay upon the people what Taxes they ſhall judge meet? To pardon all Treaſons, &c. that is one of their Propoſitions. Have they a ſtrict right and property to pardon themſelves? and ſo for all the reſt of their Propoſitions.

Theſe Propoſitions have been Voted by both Houſes, the Kings aſſent (they being drawn into Bills) makes them Acts of Parliament: Hath the King

no

no right to aſſent or diſ-aſſent? Was the ſending but a Complement? All our Law-books and Statutes ſpeak otherwiſe. This Gent. and others, muſt give an account one time or other for ſuch deluſions put upon the people.

11 H. 7. 20. 1 Iac. c. 1. 1 Car. c. 7.

AD. 4.

The Gent. ſaith, *They affirm not, that the Kings power is ſeparated from his perſon, ſo as the two* Spencers *affirmed, &c* His Majeſties perſon is now at *Holmby* under their Guards; have they not ſevered his power from him, when by no power they have left him, he can have two of his Chaplains, who have not taken their Covenant, to attend him for the exerciſe of his conſcience?

For the three Concluſions of th *Spencers*, doe not the two Houſes act every of them? They ſay, his Majeſty hath broken his Truſt, touching the Government of his people: They have raiſed armies to take him, they have taken him and impriſoned him; they govern themſelves; they make Laws, impoſe Taxes, make Judges, Sheriffes, and take upon them *omnia inſigna ſummæ poteſtatis*: Is not this to remove the King for miſdemeanours,

14 Ed. 2. Exillium Hugonis Calvins caſe 1 E c 2. 7 pars, Reports, 11.

to

to reform *per aſperte*, to govern in aide of him; the three Concluſions of the *Spencers*? Doe they think the good people of *England* are become ſtupid, and will not at length ſee theſe things?

The Gentleman ſaith, *They doe not ſeparate his power from his Perſon, but diſtinguiſh it, &c.* His power is in his legall Writs, Courts, and Officers: when they counterfeit the Great Seal, and ſeale Writs with the ſame, make judges themſelves, Courts and Officers, by their own Ordinances againſt his conſent, declared under his true Great Seale of *England* (not by word of mouth, letters, or miniſters onely) their Seale is obeyed, their own Writs, their own Judges, their own Courts, their own Officers, and not the Kings: The time will come when ſuch ſtrange actions & diſcourſes will be lamented

plowd. 4. Eliz. 213. the Kings Power and his Perſon are indiviſible.

AD. 5.

The Gentleman goes on, *We take not from the King all power of pardoning Delinquents, we onely ſay it is not proper to him* quarto modo, *&c.* What doe you meane by *quarto modo*? I am ſure, *Omnis Rex Angliæ, ſolus Rex & ſemper Rex*, can doe it, and none elſe; read the books of the Law to this purpoſe, collected by that reverend and

Seanford, pleas 99. 27. H.8.c. 24 Dict, 163.

and learned Judge *Stanford*, from all Antiquity to his time, who died in the laſt yeare of King *Philip* and Queene *Maries* Reigne, you ſhall finde this a truth undeniable; and this power was never queſtioned in any Age in any Book by any untill this time, that every thing is put to the queſtion: You Gentlemen, who profeſſe the Law, and maintain the party againſt the King, return at length, and bring not ſo much ſcandall upon the Law, (which preſerves all) by publiſhing ſuch incredible things.

Brac. lib. 3. cap. 14. fol. 132. 1 pars, Inſtit. p. 344. plow. 3. Eliz. 236, 237.

We hold only what the Law holds: the Kings Prerogative and he ſubjects Libertyare determined, and bounded, and admeaſured by the written Law what they are; we doe not hold the King to have any more power, neither doth his Majeſty claime any other but what the Law gives him; the two Houſes by the Law of this land, have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting: (and the Army under Sir *Thomas Fairfax* (howbeit but Souldiers) doe now underſtand that to be Law, and doe now evidently ſee, and aſſuredly know, that it is not an Ordinance of the two Houſes, but an act of parliament, made by the King, Lords, and

and Commons that will ſecure them, and let this Army remember their executed fellow-Souldiers,) and the Law was alwayes ſo taken by all men untill theſe troubles, that have begot Monſters of opinions.

AD. 6.

This Gentleman ſayes, *The Parliament hath declared the King to be in no condition to govern, &c.*

There is no end of your diſtinctions, I and you profeſſe the Law; ſhew me Law for your diſtinctions, or letter, ſillable, or line, in any Age in the books of the Law, that the King may in one time be in no condition to govern, and yet have the habit of governing, and another time he may (*viz.*) when the two Houſes will ſuffer him: The Law ſaith thus, *Ubi lex non diſtinguit, non eſt diſtinguendum.*

He ſaies, *The King is not barred from returning to His Paliament*, (as he calls the two Houſes) he knows the contrary, the whole City knows the contrary, *Nos juris conſulti ſumus ſacerdotes*, (as *Juſtinian* the Emperour hath it, in the firſt book of his *Inſtitutions*) and therefore knowledge and truth ſhould come from our lips: Worthy and ingenious men will

will remember, and reflect upon that paſſage of that good and wiſe man *Seneca*, *Non qua itur, ſed qua eundum*; follow not the wayes of the Lawyers of the Houſe of Commons: God forgive them, I am ſure the King will, if they be wiſe and ſeek it in time.

AD. 7.

5 Eliz. cha 1. Cawdreys caſe 5 pars, fol. 1.

The Gent. ſayes, *We ſweare that King is our ſupreme Governour over all perſons and in all cauſes, &c.* Why hath he left out the word (*onely*?) for the Oath the members now take, is that King *Charles* is now the onely and ſupreme Governour in al cauſes, over al perſons, and yet they keep their onely Supreme Governour now in priſon, and act now in Parliament by vertue of their priſoners Writ, and by a concurrent power in this Parliament, and by their own ſtrict right and property, (as the Gentleman affirms in his Anſwer) Theſe things agree well with their Oath, that the King is the onely Supreme Governour in all cauſes over all perſons. This Oath is taken now in the Parliament time by all the Members of the Houſe of Commons, and is required by the Law to be taken in all Parliaments, otherwiſe they have no power, nor co-

This Oath is allowed by the Common Law of the Land.

colour to meddle with the publick Affaires.

This Oath being taken in Parliament, that *the King is the only and Supream Governour in all Causes*, then it follows in Parliament causes; *over all persons*, then over the two Houses; Let them keep this Oath, and we shall bee sure of Peace in the Land: and good Lawyers ought to desire peace both for the publicke good, and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *Wee doe not swear that the King is above all Law, nor above the safety of his people*; neither doe we so sweare, but his Majesty and we will sweare to the contrary, and have sworn, and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Law, nor above the safety of his people; the Law, and the safety of his people are his Safety, his Honour, and his Strength.

AD 8.

The Gent. concludes, *That Acts of Parliament are not formally binding, nor compleat without the Kings assent, yet the Houses have a virtuall power without*

out the Kings particular assent, to doe things in order to publick justice and Safety (*viz.*) In setting up the Excise, in raising and maintaining of Armies, in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, imprisoning the King, abolishing the Common prayer Book, selling the Churchs Lands, &c. all these are in order to the publick Justice and Safety.

Mr. *H. P.* you are of my profession, I beseech you, for the good of your Country, for the Honour of our Science perswade your self and others, as much as in you lies, to believe and follow the monition and counsell of that memorable, reverend, and profoundly learned in the Lawes and Customes of the Land, the Lord *Cooke*, who writes as becomes a great and a learned Iudge of the Law (a person much magnified by the two Houses) in these words: **Peruse over all Books, Records and Historics, and you shal find a Principle in Law, a Rule in Reason, and a Triall in Experience, that Treason doth euer produce fatall and finall destruction to the offender, and never attaines to the desired end (two inci-**

3 par. Inst. pag. 36.

dents

dents inſeparably thereunto) and therefore let all men abandon it, as the poyſonous bait of the Devill, and follow the Precept in holy Scripture, SERVE GOD, HONOUR THE KING, AND HAVE NO COMPANY WITH THE SEDITIOUS.

Concluſion.

I ſay againe, that without an Act of Oblivion, a gracious generall Pardon from His Majeſty, the Arrears of the Souldiers payd, a favourable regard had to tender Conſciences, there will be neither Truth nor Peace in this Land, nor any man ſecure of any thing he hath.

By me *David Jenkins* Priſoner in the Tower.

A

A DISCOVRSE TOUCHING *The Inconveniencies of a Long-continued* PARLIAMENT

A Perpetuall Parliament is repugnant to the Act made this Parliament for a Tritnall Parliament; for how can every three yeares a Parliament beginne, if this bee perpetuall, which may bee ſo if the two Houſes pleaſe?

2. An adjournment of the Parliament makes no Seſſion, 4 *pars*; *inſtit. fol.* 27. Howbeit, before the adjournment, the KING gives His Royall aſſent to ſome Bills. *Cocke. ibid.*

3. There is no Seſſion till a Prorogation

rogation or diſſolution of the Parliament.

4. This Parliament, as appeares by the Act for not diſſolving thereof, ſet downe in the printed Statutes of this Parliament, *fol.* 138. cannot be prorogued or diſſolved, but by Act of Parliament. There hath been as yet no Act of Parliament in that behalfe: And therefore all the Acts of this Parliament, are Acts of one Seſſion.

Plowd. com. 33. H. 8. Bro. relation 35. Bro. Parl. 86. Dier. 1. Mariæ 85.

5. All Acts of one Seſſion relate to the firſt day of the Parliament, and all the Acts of ſuch a Parliament are Acts of one day: ſo the Act for the Trienniall, and the Act for this Perpetuall, are two Acts of one day by the Law.

6. 4 *Ed.* 3. *cap.* & 36. *Ed.* 3. *cap.* 10. A Parliament is to bee holden once every yeare, and more often if need ſhall bee; thoſe Acts are confirmed by the Act for the Trienniall Parliament. How doth a perpetuall Parliament agree with a Parliament once every yeare, or with the intention of thoſe Lawes? How doth a Parliament every three yeares agree with a Parliament for ever, which may be if the two Houſes pleaſe?

7. The reſult is this; at one day in Law.

Law this Parliament two Acts have paſſed (for howbeit the one was in 16. *Carol.* and the other in 17 *Carol.* yet both in Law are Acts of one day) the one ſaith there ſhall be a Trienniall Parliament after the end of the ſitting of this Parliament: The other, this Parliament ſhall ſit for ever if they pleaſe. The one will have a Parliament with an end, the other, a Parliament without an end.

1 Part, Doct Bonhams caſe, fo. 118 8. E. 3 3. 30 33. E. ceſſavit, 32 27. H. 6 Annuity 41. 1 Eliz. Dier, 313.

When an Act of Parliament is againſt common Right or Reaſon, or repugnant, or impoſſible to be performed, the Common Law ſhall controle it, and adjudge this Act to be void; they are the words of the Law.

An Act of Parliament, that a man ſhall be Judge in his own cauſe, is a void Act. *Hobbart* fol. 120.

Begin with Common Right. It is againſt Common Right, that indebted men ſhould not pay their debts: That if any Member of the Houſe of Commons doe any Subject wrong by diſſeiſing him of his land, or diſpoſſeſſing him of his goods, or blaſting of his fame, or doing violence to his perſon, that ſuch perſons during their lives ſhould not be queſtioned by a Priviledge of Parliament, and that extended alſo to many other beſide them-

themſelves. Common Right doth abhorre theſe Enormities, which a perpetual Parliament doth beget, beſides the utter deſtruction of all mens actions, real, perſonal, or mixt, who have to do with Parliament-men, by the Statute of Limitation, which confines Suites to certain yeares. 21. Iac. c. 16.

For Common Reaſon. Parliaments were ordained for Remedies to redreſſe publique Grievances; It is againſt Reaſon they ſhould make publique and inſufferable Grievances. The Law of the Land allowes no protection for any man imployed in the ſervice of the Kingdom but for a year, to be free from Suites, and in many Suits none at all, howbeit he be in ſuch ſervice; but a Parliament perpetual may prove a protection, not for a year, but for ever, which is againſt all manner of Reaſon. 39. H. 6. 39.

For impoſſibility. The death of his Majeſty (whoſe life God prolong) diſſolves it neceſſarily; for the Writ of Summons is, *Carolus Rex in hoc individuo*, and *Carolus Rex* is in this particular, *Habiturus colloquium & tractatum cum prelatis & proceribus*, &c. King *Charles* being to have Conference and Treaty with his Prelates and Peeres; *Carolus Rex* cannot have

21. H. 5. Cook. Title Parl. 3. pars.

colloquium & tractatum, Conference and Treaty when he is deceaſed, and therefore it is as impoſſible for any Parliament to continue as long as they pleaſe, as for a Parliament to make a dead man alive.

For Repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17. *Caroli Regis*, which is to continue at pleaſure, is in the ſaid act expreſſed to be to raiſe credit for Money for theſe three purpoſes. Firſt, for relief of his Majeſties Army and People in the North. Secondly, for preventing the imminent danger of the Kingdom. Thirdly, for ſupply of other his Majeſties preſent and urgent occaſions. Theſe ends are ended, the reliefe of that Army, the imminent danger ſupp ſed was ſix yeares ago, the ſupply of his Majeſty hath been a ſupply againſt Him; take away the end, the meanes thereto are to no purpoſe; take away the cauſe, the effect ceaſeth; and therefore the three ends of this Act being determined, it agreeth with Law and Reaſon, the Act ſhould end, the Law rejects things unprofitable and uſeleſſe.

Sir Anthony Maines caſe 5. pars. 1. H. 4. 6. Littl. cap. Villeu.

A perpetual Parlament (beſides that

that it inciteſ men to ſelfe-ends, deſtructive of the publique, of which the whole Kingdom hath had ſufficient experience) will be a conſtant charge to the Kingdom; for that every County and Burrough, who ſend Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Counties will amount above ſome Subſidies yearly: there are many poor Borough-Towns in each County of this Kingdom, who being to maintain two Burgeſſes in Parliament, will be quickly beggered, if the Parliament have no end; for all which Reaſons it is clear, that ſuch long continuance of Parliaments, will inſtead of a Remedy (which is and ought to be the proper and true ends of Parliaments) become an inſufferable Grievance and Oppreſſion to all the People of the Land.

The Writ of Summons this Parliament is the *Baſis* and Foundation of the Parliament. If the Foundation be deſtroyed the Parliament fals. The Aſſembly of Parliament if for three purpoſes. *Rex eſt habiturus colloquium & tractatum cum Prælatis, magnatibus & proceribus ſuper arduis negotiis, concernentibus*, 1. Nos, 2. *Defenſionem regni noſtri*. 3. *Defenſionem Eccleſiæ Anglica-*

na. This Parliament hath overthrown this Foundation in all three parts. 1. *Nos*. The King they have chaſed him away, and impriſoned him; they have voted no Prelates, and that a number of other Lords, about fourty in the City muſt not come to the Houſe, and about fourty more are out of Town, the *colloquium & tractatus* are made void thereby. For the King cannot conſult and treat there with men removed from thence. 2. *Defenſionem regni noſtri*, that is gone; they have made it their Kingdom, not His, for they have uſurped all his Soveraignty. 3. *Defenſionem Eccleſiæ Anglicanæ*, that is gone, that *Eccleſia Anglicana* muſt be underſtood neceſſarily that Church, that at the teſte of the Writ was *Eccleſia Anglicana*, they have deſtroyed that too. So now theſe men would be called a Parliament, having abated, quaſhed, and made nothing of the Writ whereby th y were ſummoned and aſſembled. If the Writ be made void, all the Proceſſe is void alſo: that Houſe muſt needs fall where the Foundation is overthrown, *Sublato fundamento opus cadit*, the Foundation being taken away the worke fals, is both a Maxime in Law and Reaſon.

For ſome yeares paſt, there is no crime

crime from treaſon to treſpaſſe, but they are guilty of: all Treaſons, Felonies, Robberies, Treſpaſſes are *contra pacem, coronam & dignitatem Regis*, againſt the peace, Crown and Dignity of the King; as appeares by all Indictments in all Ages. *Pax Regis*, the Kings peace, *Corona Regis*, the Kings Crown, *Dignitas Regis*, the Kings Dignity, are all trod under foot, and made nothing; *Pax Regis*, the peace of the King is become a Warre againſt the King, his Dignity put into priſon, and the Crown put upon their own heads.

All the Judges of *England* have reſolved, that Noble-men committing Treaſon have forfeited their Office and Dignity; *Their Office is to counſel the King in time of peace, to defend him in time of warr*, and therefore thoſe men againſt the Duty and end of their Dignity taking not onely Councel, but Armes alſo to deſtroy Him, and being thereof attaint by due courſe of Law, by a tacite condition annexed to the eſtate of their Dignity, have forfeited the ſame, they are the words of the Law, and therefore they have made themſelves incapable to be Members of the Upper Houſe.

Nevils caſe 7. part 34. a. Iac.

Briberies, Extortions, Monopolies, ought, to be inquired after by the Houſe of Commons, and complained of to the King and Lords, What have they done?

The Houſe of Commons cannot by the Law commit any man to priſon who is not of the ſaid Houſe, for Treaſon, Murder, or Felony, or any thing but for the diſturbance of the publique peace, by the priviledge of the whole Body.

They have no power by the Writ, which the King iſſueth to elect and returne Members of that Houſe, ſo to do. For the Writ for them is onely *ad faciendum & conſentiendum*, to thoſe things, whereof his Maieſty ſhall conſult and treat with his Prelates and Nobles, *& de communi conſilio regni* ſhall be there ordained, as appeares by the Writ. Here is no ſeparate power given over the kings people to them, but onely *ad faciendum & conſentiendum*, and in all times this hath been expounded and reſtrained to that which concerned their own Members in relation to the publique Service, as they are Members of the corporate Body

4. part inſt. 23, 24, 25.

Body of the Parliament, whereof the king is the Head.

But that the Houſe of Commons have committed any man for Treaſon, Murder or Felony, or for any offence that had no relation to a Member of the Houſe of Commons, as it is againſt Law and Reaſon, ſo no inſtance can be given till this Parliament.

All Queſtions and Trials where Witneſſe are examined, the Examination is upon Oath by the Law, by all our Books, Statutes, every dayes practice. Examination without an Oath, is but a looſe Diſcourſe; therefore the Houſe of Commons not claiming power to give Oath, have no power to examine any man. 19.H.6.48. 22.E.4.22 5.Hen.4.c.8. 3 H.6.46.

No man ſhall be impriſoned by the King or his Councel, unleſſe it be by Indictment, preſentment of his good and lawfull Neighbours where ſuch deeds be done, in due manner, or by proceſſe made by Writ original at the Common Law: this Statute rehearſes *Magna Charta*, p.29. and expounds *Lex terræ*, the Law of the Land there mentioned: this Law bindes all men, and the Houſe of Commons (for they ſay, they are of the Kings Councel) in all points, but only againſt the Diſturbers of the ſervice of the parliament; and 25.E.3.c.4. Petition of Right, 3. Car.

therefore the Impriſonment of ſeveral perſons who are not their Members, and for no diſturbance to their Members, is utterly againſt the Law of the Land, and the Franchiſe of the Freemen of this Realme.

Cui non licet quod minus, non licet quod majus; he who may not do what is leſſe may not do what is greater; they cannot commit a Man for Murder or Felony, much leſſe for Treaſon.

8. part, Cook 120. 27. H. 6. 8. No Court can fine and impriſon, but a Court of Record, the Houſe of Commons is no Court of Record, the Houſe of the Lords where the King is in perſon, his Nobles and his Judges, and Councel at Law, the Maſters of the Chancery aſſiſting, is a Court of Record, and that is the Court of parliament, where the *Colloquium & tractatus* is. The Houſe of Commons may preſent Grievances, grant or not grant Aides, conſent or not conſent to new Laws, but for fining or impriſoning any but as aforeſaid, is but of a late date, and no ancient uſage; They have no Journal Book, but ſithence *Edw. 6.* time *6 Hen. 8. cap. 15.* doth not prove the Houſe of Commons to be a Court of Record, it mentions onely to be entred on Record in the Book of the Clerke of the parliament

21. E. 4. fol. 46.

if

if any Member depart into the Country. There is no Journal but ſithence *Edw.6.* time, and that is a Remembrance or Memorial, as 12.*H.*4.23. Commons in Parliament ne ſont Iudges.

The whole parliament is one corporate Body, conſiſting of the Head and three Eſtates: the Court is onely there where the *Conſilium & tractatus* is, where the conſult and treaty is with the king, which is in the Houſe of Lords onely.

The Houſe of Commons claime not to examine upon Oath any Man; no Court can be without a power to give an Oath, Courts Baron, Court of Pipowders, County-Court, may and do give Oath: No Court can be without a power to try, no triall can be without Oath; and therefore the Houſe of Commons not claiming power to give an Oath, can bring no matter to triall, and conſequently can be no Court. 14.*H.*8.3. 36.*H.*8. Dier.60. 4.pars,inſt. cap.1.

The behaviour of the Commons at a Conference with the Lords; the Commons are alwayes uncovered, and ſtanding, when the Lords ſit with their hats on, which ſhewes they are not Colleagues in judgement: for fellow-judges owe no ſuch reverence to their Companions.

When was ever Fine impoſed by the Houſe of Commons eſtreated in the 11.*H.*4.c.12

Exchequer? The ejecting of a Member, who hath ſitten, is againſt the Law: for they cannot remove a man out of the Houſe unduly returned, much leſſe a man returned duely.

1. H. 4. c. 1.
1. H. 5. c. 1.
8. H. 6. c. 7.
23. H. 6. c. 15.

By theſe Lawes it appeares, that if any undue returne be made, the perſon returned is to continue a Member, the Sheriffes puniſhment is 200 l. one to the King, another to the party that is duly elected, Impriſonment for a year without Bail or Mainprize; and that perſon who is unduly returned, ſhall ſerve at his own charge, and have no benefit at the end of the parliament by the Writ *De ſolutione ſaudorum Militum, Civium & Burgenſium Parliament.* And the triall of the falſity of the returne, is to be before the Juſtices of the Aſſizes in the proper County, or by Action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practiſed but of late times; for beſides theſe Lawes, it is againſt a Maxime in the Common-Law: an Averment is not receivable againſt the returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made.

3. Ed. 4. 30.
5. Ed. 4. 41.

The ſaid Statutes condemne and make

make thoſe Members no Members, which were not reſiant in the County and Boroughs, for which they were elected, at the time of the teſte of the Writ of the Summons of the Parliament, and any abuſive practice of late times to the contrary is againſt the Law, and ought not to be allowed.

Aſſault upon Parliament-men.

If a Parliament-man, or his Menial Servant be aſſaulted, beaten, or wounded, in the Parliament-time, proclamation ſhall be made where the deed is done, that the Offender ſhall render himſelf to the Kings Bench, within a quarter of a year after proclamation made, & the Offence there to be tried, for Default of Appearance the Offender is declared, attainted of the Miſdeed, and it is accorded that thereafter it be done likewiſe in the like caſe. 5 H. 4. c. 10. 11 H. 6. c. 12.

Serving of proceſſe upon a Lord of the Parliament puniſhed in the Lords Houſe. Bego de Clare 18. E. 3. 4. pars inſt. fol. 24.

Serving of proceſſe upon *Thornsby* inquired of in the *Chancery*, and there the Offenders were convicted. 10. Thornſbyes caſe, Clerke of the Parl. ibid. 10. E. 3.

The premiſes prove, that breaches of priviledge of Parliament may be puniſhed

puniſhed elſe-where than in Parliament.

Upon all this Diſcourſe, it is eaſie to diſcerne what fruits may be expected from this Parliament, continuing as long as the two Houſes pleaſe; and that there is no ſafety for this common-wealth, but by the Obſervations of their ancient Franchiſes, cuſtomes and Lawes.

Concluſion.

I Say again, that without an Act of Oblivion, a gracious generall Pardon from His Maſty, the Arrears of the Souldiers payd, a favourable regard had to tender Conſciences, there will be neither Truth nor Peace in this Land, nor any man ſecure of any thing he hath.

AN

AN APOLOGY FOR THE ARMY,

Touching the eight Quæres, &c.

LONDON,
Printed in the Yeare,
1648.

ARMY.

AN APOLOGY FOR THE ARMY.

THeſe Treaſonable and inſolent *Queries* make the Army the Houſes Subjects, and not the Kings. *None by the Lawes of this Land can in this Kingdome have an Army but his Majeſty.* Bracton, fol. 118. Stamford, fol. 2.

It appeares, the Army doth now now evidently perceive, that they were miſ-led by the ſpecious pretences of *Salus populi*, the maintenance of the Kings Honour, and of the maintenance of the Lawes of the Land, and Liberties of the Subject, to take up Armes againſt their naturall Liege-Lord and Soveraigne the King: the people is the Body, the King is the Head; Was the Body ſafe when the Head was diſtreſſed and impriſoned?

For

Mag. Chart. c. 1. & ult. All the Act concerning the King, Church, and Churchmen. 25. Ed. 1. cap. 1.

For Lawes and Liberties have not the prevailing party in the two Houſes deſtroyed above an hundred Acts of Parliament, and in effect *Magna Charta, & Charta de Forreſta*, which are the common Lawes of the Land? Doth Exciſe, the Fifth and Twentieth parts, Meal-money, and many more Burdens which this Land never heard of before, maintain the Liberties of the people? You and that party of the two Houſes, made the Army by ſeverall Declarations before Engagement, believe that you would preſerve the Kings Honour and Greatneſs, the Lawes and Liberties of the people: The Army and the whole Kingdom now *facta vident*, ſee your Actions, and have no reaſon longer to believe your Oathes, Vowes, and Declarations; and ſince that party in the two Houſes refuſe to performe any thing according to their ſaid Oathes, Vowes, and Declarations, the Army and the Kingdom may and ought, both by your own principles, and the Lawes of the Land, to purſue the ends for which they were raiſed. And ſo your firſt *Quære* is reſolved; whereby it is manifeſt, that ſpecious pretences to carry on ambitious and pernicious Deſignes, fix not upon the Army, but upon

upon you, and the prevailing party in both Houſes.

The ſolution of the ſecond Quere.

The Army, to their eternall honour, have freed the King from impriſonment at *Holmby*. It was High Treaſon to impriſon His Majeſty: To free his Majeſty from that impriſonment was to deliver him out of Trayterous hands, which was the Armies bounden duty by the Law of God and the Land. That party refuſed to ſuffer his Majeſty to have two of his Chaplaines for the exerciſe of his Conſcience who had not taken the Covenant; free acceſſe was not permitted; doth the Army uſe his Majeſty ſo? all men ſee that acceſſe to him is free, and ſuch Chaplaines as his Majeſty deſired are now attending on his Grace: Who are the guilty perſons, the Army, who in this Action of delivering the King, act according to Law, or the ſaid party who acted Treaſonably againſt the Law? Who doth obſerve the Proteſtation better, they who impriſon their King, or they who free him from priſon?

3 par. Inſt. f. 12. 39. El. 1 Iac. ibi. 3. & 3. E. 6. c. 2. 11 H. 7. c. 1.

That this Army was raiſed by the Parliament, is utterly falſe. The Army

my was raiſed by he two Houſes upon the ſpecious pretences of the Kings Honour, common ſafety, and the preſervation of Lawes and Liberties; which how made good, hath been ſhewed before, and all the people of the Kingdom do finde by woefull experience.

14.H.8.3. 36H.7, Dier 60. 4 pars Inſtit. p.1, 3. 12.14. 16 R.2. c.1. 5 Eliz. c.2. 17 Carol.

The two Houſes are no more a Parliament, than a Body without a Head a Man. The two Houſes can make no Court without the King; they are no Body Corporate without the King; they all, Head and Members, make one Corporate Body. And this is ſo clear a Truth, that in this Parliament, by the Act of *17. Caroli* it is declared,

The Act for the continuance of this Parliament.

That the Parliament ſhall not be diſſolved or prorogued but by Act of Parliament: but the two Houſes may reſpectively adjourne themſelves. Two Houſes and a Parliament are ſeverall things, *Cuncta fidem vera faciunt*: all circumſtances agree to prove this truth.

4 par. Inſtit. p.18. 4 par Inſtit. p.4,9. 5 Eliz. c.1,2.

Before the *Norman* Conqueſt, and ſince to this day, the King is holden *Principium, Caput & Finis*, that is, the beginning, Head, and chiefe end of the Parliament, as appeareth by the Treatiſe of the manner of holding of Parliaments made before the *Norman* Conqueſt; by the Writ of Summons

of

of Parliament whereby the Treaty and *Parler* in Parliament is to be had with the King onely; by the Common Law, by the Statute-Law, by the Oath of Supremacy taken at this, and every Parliament, it doth manifestly appeare, that without the KING there can be no coulour of a Parliament.

How many Votes have they revoked in one Session, yea, and Bills? Was there ever the like done? Nay, is not the constant course of Parliaments violated and made nothing thereby? They are guarded by armed men, divide the publike Mony among themselves, and that party endeavours to bring in a Forraigne Power to invade this Land against. If they be no Parliament, as clearly they are none without his Majesty, they have no priviledges, but do exercise an Arbitrary, Tyrannicall and Treasonable power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offender, to apprehend him, and to secure him so that Justice may bee done upon him according to the Law. 7 H. 4. 25. 8 E. 4. 3. 9 E. 4. 27. 4 H. 7. 18. 27 H. 8. 23.

You say, the disobedience of the Army

Army is a ſad publick preſident, like to conjure up a ſpirit of univerſall diſobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing party in the Houſes are guilty, who conjured up the ſpirit of univerſall diſobedience againſt his Majeſty, your and our onely Supreme Governour, but you, and that party in the two Houſes, and even then when the Houſe of Commons were taking and did take the ſaid Oath of Supremacy? For the Covenant you mention, it is an Oath againſt the Lawes of the Land, againſt the petition of Right, deviſed in *Scotland*, wherein the firſt Article is to maintaine the Reformed Religion in the Church of *Scotland*: And certainly there is no Subject of the Engliſh Nation doth know what the Scottiſh Religion is. I believe the Army tooke not the Covenant. No man by the Law can give an Oath in a new caſe without an Act of parliament; and therefore the impoſers thereof are very blameable, and guilty of the higheſt Crime.

2. par. Coll. 1 Ord. pag. 8. 3.

3 par. Inſt. fol. 165.

Petition of Right, 3 Car. 2 pars inſtit. 719.

The Writer of theſe *Queres* ſeems to profeſſe the Laws; let him declare what Act of parliament doth juſtifie the tendring, giving, or taking of the ſaid Oath: I know there is none

he,

he knoweth that all the parts of it are destructive of the Laws and Government to maintaine which the Law of Nature, and the Law of the Land had obliged them. The Oath of the Covenant makes the Houſes ſupreme Governours in cauſes Eccleſiaſtical; the oath of Supremacy makes the King ſo: and yet both taken by the ſame perſons, at the ſame time. What credit is to be given to perſons who make nothing of Oathes, and contradict themſelves? How doe the Covenant & the Oath of Supremacy agree? How do their proteſtation and the Covenant agree? How do their Declarations and Oaths agree? The Lord be merciful to this Land for theſe Oaths.

Mag. Chart. cap. 1. & ultimo Articuli cleri, and many other Statutes. 16 E. 4. 10.

It is a ſad thing to conſider that ſo many Gentlemen who profeſſe the Lawes, and ſo many worthy men in both Houſes ſhould be ſo tranſported as they are, knowing that the Lawes of the Land from time from to time, and in all times, are contrary to all their actions, and that they yet ſhould amuſe themſelves and the people with the word parliament without the King and with the Covenant; whereas they know they are no Parliament without His Majeſty: And that Engliſh men throwout the Kingdome ſhould ſwear

a Covenant to preſerve the Reformed Religion of *Scotland*, in Doctrine, Worſhip, Diſcipline and Government, which they doe no more know than the Doctrine, Worſhip, Diſcipline and Governmenment of *Preſter John* in *Ethiopia*; if they conſider it, they cannot but diſcerne that this is a high deſperate and impious madneſſe.

Be wiſe in time: Without the King and the Lawes, you will never have one hour of ſafety for your Perſons, Wives, Children or Eſtates. Be good to your ſelves and to your Poſterities; apply your ſelves to be capable of an Act of Oblivion, and of a generall Pardon, and to be able and willing to pay the Souldiery, and to allow a reaſonable liberty for mens conſciences; and God will bleſſe your endeavours: and the people (to whom you are now very hatefull) will have you in better eſtimation.

The third Quere is thus anſwered.

You reſemble the Army to *Jack Cade* and his complices, and you cite the Act of Parliament of 31 *Hen.* 6. *cap.* 1. And that it may appeare who acts the part of *Jack Cade*, you and that

that party in the two Houſes, or the Army, I think it neceſſary to ſet down the ſaid Act in words at length as followeth.

Firſt, *whereas the moſt abominable Tyrant, horrible, odious and arrant falſe Traytor Iohn Cade* calling and nameing himſelfe ſometime *Mortimer*, ſometime Captaine of *Kent*, which name, fame, acts and feates are to be removed out of the ſpeech and minds of every faithfull Chriſtian man perpetually, *falſly and traiterously purpoſing, and imagining the perpetuall deſtruction of the Kings ſaid Perſon, and finall ſubverſion of this Realm, taking upon him Royall Power, and gathering to him the Kings people in great numbers, by falſe ſubtile imagined language, and ſeditiously making a ſtirring Rebellion and Inſurrection, under colour of Juſtice, for Reformation of the Lawes of the ſaid King, robbing, ſtealing and ſpoyling great part of his faithfull people.* Our ſaid Soveraigne Lord the King conſidering the premiſes, with many other which were more odious to remember, *by the advice and conſent of the Lords aforeſaid, and at the requeſt of the ſaid Commons*, and by authority aforeſaid, hath Ordained and Eſtabliſhed that the ſaid *Iohn Cade*, ſhall be reputed had, named,

med, *and declared a falſe Traytor to our Soveraigne Lord the King*; and that all his tyranny, acts, feates and falſe opinions ſhall be voyded, abated, nulled, deſtroyed, and put out of remembrance for ever: and that all Inditements, and all things depending thereof, had and made under the power of Tyranny, ſhall be likewiſe void, annulled, abated, repealed, and holden for none: and that the blood of none of them be thereof defiled nor corrupted, but by the authority of the ſaid Parliament clearly declared for ever: and that all Inditements in times coming, in like caſe, under power of Tyranny, Rebellion and Stirring had, ſhall be of no Record nor effect, but void in Law; *and all the petitions delivered to the ſaid King in his laſt parliament holden at weſtminſter, Novemb. 6. in the 29. of his reigne, againſt his mind, by him not agreed, ſhall be taken and put in oblivion, out of remembrance*, undone, voided, annulled, and deſtroyed for ever, as a thing purpoſed againſt God and Conſcience, and againſt his Royall Eſtate and preeminence, and alſo diſhonourable and unreaſonable.

Now we are to examine who hath trod in the ſteps of *Iack Cade*, you and the

the preſent prevailing party of the two Houſes *tooke upon them, and doe take all the Royall power in all things*; ſo did *Iack Cade*, as appeares by the laid Act; the Army do not ſo: *They who impriſon the King purpoſe to deſtroy his perſon* (our impriſoned Kings alwaies * fared ſo) *Iack Cade* did likewiſe ſo purpoſe: The ſaid party in the two Houſes *made a ſtirring under colour of Iuſtice for reformation of the Lawes*; ſo did *Iack Cade*: The Army doe not ſo, but deſire that the Lawes ſhould be obſerved: *Iack Cade levied Warre againſt the King*, The Army preſerves Him: *Iack Cade* dyed a *Declared Traytor to his Soveraigne Lord the King*; this Army might have lived to have the glorious true Honor of being reſtorers of their King.

* Edward 1. Henry. 6. Richard 2.

Simon Sudbury Atchbiſhop of *Canterbury* was murthered by *Iack Straw*: *William Laud* Archbiſhop of *Canterbury* was likewiſe murthered by that party of the two Houſes, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houſes, the Army had no hand in it. Many miſled by *Iack Straw*, perceiving his Trayterous purpoſes, fell from him: and as that was lawfull, juſt,

25 Ed. 3. 4. 28 Ed. 3. 3. Petition of Right.

and honourable, ſo it is for this Army to adhere to their natural King King, and ſo endeavour to ſettle the Kingdom again in the juſt Lawes and Liberties thereof: *London* did then right worthily adhere to the King and the Lawes, and not to *Jack Straw* and his ſpecious pretences, and it is hoped they will now ſo do: By this it appeares, that the Gentlemans Diſcourſe touching *Jack Cade*, faſtens altogether on his party, and cleareth the Army.

To the I V. *which is reſolved thus.*

The Arreares of the Army (howbeit it is the leaſt thing they look after) yet being not paid them, it is by the Law of the Land a ſufficient cauſe to leave and deſert that party in the Houſes: A perſon who ſerves in any kinde, and is not paid his wages, the deſertion of that ſervice is warrantable by the Lawes of the Land: You ſay, the Houſes will reforme all things when the Army doth disband: Who will believe it? Will any believe that the ſetling of the Presbytery will do it? Will any believe that his Majeſty will paſſe the Propoſitions ſent to Him to *Newcaſtle*? Will any man believe that this

Fitz. N. B. 159. 9. Ed. 4. 20. 38. H. 6. 27. 23. Eliz. Dier, 369.

this Kingdom will ever be quiet, without his Majeſty and the ancient and juſt Lawes? Can the Members of the Army conceive any of them to be ſafe in any thing without a pardon from his Majeſty? Have they not ſeen ſome of their Fellowes hanged before their eyes, for actions done as Souldiers? Shall the Kingdom have no account of the many Millions received of the publique Money? Will the Members of the Houſes accuſe themſelves? Shall private and publique Debts be never paid? Shall the Kingdom lie ever unburthens of Oppreſſion and Tyranny? There is no viſible way to remedy all theſe Enormities, but the power of the Army.

To the V. *which is ſolved thus.*

The Kingdom hath better aſſurance of Reformation from the Army, than from the Houſes, for that in their Military way they have been juſt faithfull and honourable, they have kept their words: That party of the Houſes have been conſtant to nothing but in dividing the publique Treaſure among themſelves, and in laying Burdens upon the people, and in breaking all the Oathes, Vowes, and promiſes they

2,& 3.E.6. c.2, 11.H.7.c.1, Calvins eaſe,7.pars, Cook,fo.11.

ever made: As the Army hath power, ſo now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Armies are juſt, and bleſſed; and the King is bound in juſtice to reward his Deliverers with honour, profit, and meer Liberty of conſcience.

To the VI. *Quære.*

All the ſixth *Quære* containes calumnies caſt upon the Army; the new Elections are againſt all the Lawes mentioned in the Margin, and are againſt the Ejection of the old Members; and by this it may be judged, what a Houſe of Commons we have. By the ſaid Lawes it appeares, that if any undue returne be made, the perſon returned is to continue a Member, the Sheriffes puniſhment is two hundred pounds, one to the King, and the other to the party that is duly elected; Impriſonment for a year, without Bail or Mainpriſe; and that perſon who is unduly returned ſhall ſerve at his own charge, and have no benefit at the end of the Parliament, by the Writ *De ſolutione Militum, Civium, & Burgenſium Parliament.* And the triall of the falſity of the Returne, is to be before the

11.H.4.c.1. 1.h.5.c.1. 8.h.6.c.7. 23.h.6.c.15

Juſtices

Juſtices of Aſſizes in the proper County, or by Action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practiſed but of late times: for beſides theſe Lawes, it is a Maxime of the common-Law, an Averment is not receivable againſt the Returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made. 3. Ed. 4. 2. 5. Ed. 4. 42.

The ſaid Statutes condemne Elections of ſuch men who were not reſiant and dwelt in the County or Boroughs for which they were returned; and any abuſive practiſe of late times to the contrary, is againſt the Law, and ought not to be allowed.

To the VII. *Quere.*

The *Queriſt* ſaith, that the Votes of the Independents in the Houſes were arbitrary, exorbitant, and irregular, and that they diſpoſed and fingred more of the common Treaſure than others. That whole *Quere*, I believe is falſe and ſlanderous; and the Authour ought to make it good, or elſe to undergo the Law of *Talion*; which is to ſuffer ſuch puniſhment, failing 37. Ed. 3. c. 17.

ing of his proof, as the accuſed ſhould in caſe of proof made.

To the VIII. *Quære.*

This *Quære* is all minatory and threatning, and the contrary of every part is true: by the deliverance of the King and Kingdom from the bondage of that party in the two Houſes by the Army, their renown will be everlaſting; they ſecure themſelves, they content and pleaſe the Kingdom, City, and Countrey, as appeares by their confluence to ſee his Majeſty and the Army, and their acclamations for his Majeſties ſafety and reſtitution; all which doth evidence to every one of the Army, how acceptable the intentions of the Army are to the people of this Land, who have been ſo long inthralled.

Sir *Thomas Fairfax*, let your Worthineſſe remember your extraction and your Ladies, by the grace and favour of the Prince, to be in the ranke of Nobility; Remember what honour and glory the preſent Age and all poſterity will juſtly give to the Reſtorer of the King to his Throne, of the Lawes to their ſtrength, and of the afflicted

afflicted people of this Land to peace: Let the Colonels and Commanders under You and likewiſe your Souldiery, reſt aſſured, that they ſhall not onely ſhare in the renown of this Action, but alſo ſhall have ſuch Remuneration as their haughty courage and ſo high a virtue doth deſerve. This his Majeſty can and will do, the Houſes neither will nor can: and God bleſſe you all and proſper you.

I Conclude all, as I have always done: Without an Act of Oblivion, a generall Pardon, the Arreares of the Souldiery payd, and a regard to Liberty of Conſcience, this Kingdom will certainly be ruined.

Iudge Ienkins PLEA

Delivered in to the Earl of *Manchester*, and the Speaker of the Houſe of COMMONS,

Sitting in the CHANCERY at WESTMINSTER,

Which was read by their Command in open Court, the 14th of *Febr.* 1647. And there avowed.

By DAVID IENKINS Priſoner in *Newgate*.

LONDON,
Printed in the Year, 1648.

Judge Jenkins'
PLEA

Iudge Ienkin's PLEA Delivered in to the Earle of *Manchester*, and the Speaker of the Houſe of COMMONS, ſitting in the CHANCERY at WESTMINSTER.

I Have been required to appear in the Chancery the Twelfth of this inſtant *February*, before Commiſſioners appointed by the two Houſes for the keeping of their Great Seal, and managing the Affaires of the Chancery.

I cannot, nor ought, nor will ſubmit to this power; I am a Judge ſworne to the Lawes. The Law is, Firſt, that this Court is *Coram Rege in Can-*

4. part inſt. fol. 79. 8. E. 4. fol. 5. 9. E. 4. f. 15.

Cancellaria: Secondly, the Chancellor or Keeper of the great Seale is by delivery of the great Seale to him by the KING, and by taking of an Oath.

The Oath followeth in theſe words.

42. pars inſt. fol. 88. 10. R. 2. rot Parl. num. 8

1. *Well and truly to ſerve our Soveraigne Lord the King, and his people in that Office.*

2. *To do right to all manner of people poor and rich, after the Lawes and uſages of this Realm.*

3. *Truely to Counſell the King and his Counſell to conceale and keep.*

4. *Not to ſuffer the hurt, or diſherriting of the King, or that the Rights of the Crown be decreaſed by any means as far as he may let it.*

5. *If he may not let it, he ſhall make it clearely and expreſly to bee knowne to the King with his advice and counſell.*

6. *And that he ſhall doe and purchaſe the Kings profit in all that he reaſonably may, as God him help, and the contents of Gods book.*

The

The ſaid Commiſſioners among others have impriſoned their King, have declired to the Kingdome that they will make no Addreſſes or Applications to him, nor receive any from him. Declar. 17. Ian. 1647.

Have counterfeited a new great Seal, and after deſtroyed the true old great Seale which belonged by the Law to the Kings cuſtody. Articuli ſup. charters c. 5.

Theſe Commiſſioners have had no Seale delivered to them by his Majeſty, have taken no ſuch Oath, or full ill kept it, and for theſe evident reaſons grounded upon the Fundamental Lawes of this Land, theſe Commiſſioners have neither Court, Seale, or Commiſſion, and therefore I ought not againſt the Lawes, againſt my knowledge, and againſt my conſcience ſubmit to their power.

To affirme that they maintaine the Kings Power and Authority in relation to His Lawes (as they often doe) and reſtraine onely his Perſon, is ſtrange.

They muſt be remembred that the Houſe of Commons this Parliament gave in charge to Mr. Solicitor upon the proſecution of the Bill of attainder againſt the Earle of *Strafford*, to declare the Law to be, *that Machination* M. Solicitor pag. 27.

tion of War againſt the Lawes or Kingdome, is againſt the King, they cannot be ſevered.

Mr. Pim, Pa. 16.

Mr. *Pym* had in charge likewiſe upon the ſame proſecution to declare, *That the King and his people are obliged one to another in the neareſt relations, he is a Father, and the child, in law is called* pars patris, *he is the Husband of the Common-wealth, they have the ſame intereſts, they are inſeperable in their condition be it good or evill; he is the Head, they are the body, there is ſuch an incorporation as cannot be diſſolved without the deſtruction of both.* This agrees with our Lawes, and the Law of this Land: In that argument of Mr. Sollicitor, and diſcourſe of Mr. *Pim* directed by the Houſe of Commons are contained the true rights, liberties and laws of the people deduced from our Anceſtors in all ages, and wherein there is no line or word but is agreeable to the Lawes, and is a neceſſary and uſefull booke to be peruſed, and followed by all; which booke was publiſhed by Order of the Houſe of Commons. If the doctrine of that booke had been followed, we had not been ſo miſerable as we are; neither had theſe great evills enſued, for the which the Land mourns.

20. H. 7. fol. 7.
3. H. 7. fol. 12.
1. Ed. 5. fol. 3.
4. Ed. 4. fol. 25.
5. Ed. 4. fol. 29.

In

In this Moneth of *February*, six years now past, the onely Difference between his Majesty and the prevailing party in both Houses was touching the power of the *Militia*, which in plain *English* is, Power over Sea and Land: this was the sole quarrell: the King and his Progenitours have had it in all Times, the Lawes have fixed it upon them, they have used it for the Weal of the people: none of the Subjects ever had it or claimed it; the Lawes deny it them; for the time they have had it, our pressures have been miserable. Collect. of Ordinances, 1. pars, fol. 66, 67, 81.

His Majesty hath a numerous Issue, and so hath his Father: many great persons of *England*, and *Scotland* are of the Bloud Royal, and all the Kings of *Christendom* are of the same Bloud, so long as the Lawes last, or any of the said persons, or their Descendants be living, this people shall have neither peace nor profit; but all the confusions that are imaginable will attend them.

And therefore (at length) be good to your selves, restore our King, receive from Him an Act of Oblivion, a generall pardon, Assurance for the Arreares of the Souldiery, and meet satisfaction to tender consciences.

February 12. 1647. By *David Jenkins*, Prisoner in Newgate.

THE ANSVVER OF Iudge Ienkins, TO THE IMPUTATION PVT VPON HIS PLEA IN CHANCERY.

Which was read in open Court the 14. of *Febr.* 1647.

And avowed by *David Jenkins* Priſoner in *Newgate.*

Printed in the Year, 1648.

THE ANSVVER OF Judge Jenkins, TO THE IMPVTATION Put upon him in CHANCERY.

I Have no diſpoſition, nor ever had, to be known by any publique Writing: theſe miſerable Times, which fill many mens mouthes, and moſt men eares with notorious Untruths, thereby to blaſt and deſtroy the Kings Sacred Majeſty, his Lawes and Government, and to bring in a confuſion; enforceth me at this time (who formerly have written nothing but for the publique)

to

to let the World know how unjuſtly the Pamphleteer of this Week, Licenſed by our *Reformers*, hath traduced me touching a Suit commenced in their Court of *Chancery* againſt me, by one M. *Erneley* a *Wiltſhire* Gentleman, touching the Eſtate of one M. *Thomas* of *Glamorganſhire*: the Truth whereof is as followeth:

M. *Thomas*, whoſe Father and my Grandfather were two Brothers, about ſeventeen yeares paſt made his Will, and declared by the ſame his Son (being then of very tender yeares) a Ward to his Majeſty, and made him Executour, and my ſelfe during his minority, (referring to his Wardſhip) to Adminiſter his Eſtate perſonal and teſtamentary, and to be accountable to his Son when he came to Age: And ſeventeen yeares ſithence the Father died.

This Eſtate conſiſts in a Stocke of Sheep, ſo diſpoſed by me as the number are yet continued, and for the number and condition, they were at their Delivery backe, to be made as good by thoſe perſons who had the charge of them, as they were when they were received.

The reſt of the Eſtate (for any conſiderable part) was in Mortgages of Land,

Land, forfeited in the life of my young Couſin *Thomas* for many of them, and many abſolutely purchaſed by me in his name in his life time, for the which I am not yet payd.

The Land diſcended, and ought, upon Sir *Edward Thomas*, my Couſins Heire at Common Law; ſo that Mr. *Erneley*, the Plantiffe in *Chancery*, hath no colour for the Land: For my young Couſin dyed without iſſue about 17 yeares old, and could not diſpoſe of the Inheritance of any Land by any pretended Will: The ſtock of Sheep remaines, if the Plaintiffe and the *Reformers* have not Plundered them: For the Mony it came all to the Court, it was to ſatisfie the King for the Marriage.

The colour the Plaintiffe hath, is this: After the death of my old Kinſman M. *Thomas*, by undue means the young Gentleman was married to M. *Erneleys* Daughter, in a way of Raviſhment, being both children, without one penny payd, or conſent of Friends or Kindred: For the which, a Suite of Raviſhment depended againſt M. *Erneley* and others in the Court of *Wards*.

The young Gentleman dyed about 17. yeares of age, ſithence theſe confuſions

fuſions, without iſſue; and ſome houre before my young Couſins death (who dyed of a peſtilent Feaver) Mr. *Erneley* pretends a Will made by him, and that he made his Wife (M. *Erneleyes* Daughter) his Executrix: His ſaid Wife dies ſoon after, & is pretended to make a Nuncapative Will, and to make her Father (M. *Erneley*) her Executor, and ſo pretends as Executor of an Executor of an Executor: which pretended Wills, he ſaith he hath proved in the Courts of his Freinds, the *Reformers*.

Whether ſuch Wills were made or no, muſt receive an equall examination, and of what validitie they are, being pretended to be made by children *in extremis*, if made at all? And whether an Executor of an Executor of an Executor can maintaine an account by the Law of the Land? And whether (I being Executor during the Minority, *viz.* the Wardſhip) my young Couſin could make ſuch a Will as is pretended, he being no Executor till his full age.

37. H. 6. 5.
21. E. 4. 24.

The age touching Wills, the Law of this Land determines to be 21 yeares, and before that age at common Law an uſe could not be deviſed. For Wills touching goods and chattels, our Law for

did ſo: for J conceived that the Eſtate would be unſafe in Mr. *Erneley's* hands, and I was willing to preſerve it till my young Couzen came to be of age, to diſpoſe of it himſelfe, according as I was truſted.

The Law being, that the Court of *Wards* had no juriſdiction over the perſonall Eſtate (for then the Marriage was payd for to the King, and all due to the King aſcertained.) It is true, that that was inſiſted upon as was juſt, for to preſerve the Eſtate from Mr. *Erneley*, who would have made what account he pleaſed to my Couſin at his full age: And this is the truth of that buſineſſe. 32 H. 8. c. 46. 4 pars inſt. fol. 201, 202.

That I declined not the Juriſdiction of the *Chancery*, to keep an Eſtate in my hand, appeares, by my declining long ſithence the Power of the Houſe of Commons to examine me; and the *Reformers* have all my Eſtate: What would Mr. *Erneley* have, when they (the *Reformers*) have all already, for can have from me, if hee had any colour?

J deſire the good people of this City to obſerve what notorious Untruths their Licenſed Hiſtographers publiſh, to delude the people: In this particular Caſe they publiſh.

First, That *the Suite against me, is in the behalfe of an Orphan*: M. *Earnley* (who is Plaintiffe in their Court) is a *Wiltshire* Gentleman, at the least of 50. years of age, there is their *Orphan.*

Secondly, That *I made a speech to the people at the Hall door, that the questioning of me for what I had done for the* KING, *was illegall; and that the Iudges had no power to try me, the* KING *being absent*: Another notorious untruth! For I protest to God, all that *I* said was onely this, *God preserve the KING, and the Lawes.*

Thirdly, it is said that comming to the Barre, I stirred not my Hat: All the Lawyers then at the Barre were uncovered; wherefore I held it a civility, to be also uncovered: and so I was, as they all know.

Fourthly, That *the Earl of* Manchester *should say, I received a great estate in Money, of the Orphans estate*: As there is no truth in it, so it is most untrue that the said Lord so said (as all men present can testifie.) The truth is, they can not what they do, what they say, what they swear, nor what they write: Witnes the Declaration of a prevailing party of the H. of Comons, of the 11 of

this instant *February*; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their solemne League and Covenant, their Declarations to make His Majesty a glorious King, fearfull to his enemies, and beloved of his subjects; and yet now, after 22. yeares, they would insinuate to the people, that this King, whom they have so much magnified, hath poysoned his own Father.

Fiftly, it is a publike notorious untruth. That *the Parliament hath published a Declaration against the King, of the* 11 *of this instant February*: whereas it is well known to be the Declaration of the prevailing party of the House of Commons onely, without the Lords: and so they would make that prevailing partie only to be the *Parliament.

Let the people of *England* beleeve their five sences; how it was with them seven yeares agoe, and before, during his Majesties Reign: how this Kingdome abounded then with Peace, Plenty, and Glory, to the admiration & envy of other Nations: and now let them consider and judge by their Sences, hithence those men (whom nothing would satisfie, but all Power both by Sea and Land, which in truth is the

*Their licensed Historiographer who published this, is called their Kingdoms weekly Post, from Wednesday Feb. 7. to Wednesday the 16. of Feb. 1647

and Kingſhip, which they call the *Militia*) have uſurped the ſaid Power Regal, whether they have not by Impoſtures and Deluſions, diffuſed among the people by themſelves and their Agents, brought a flouriſhing Kingdom to the moſt deplorable condition it now is in.

To the end that this Kingdom may not utterly be ruined, God incline their hearts to reſtore his Majeſtie, and for their own and their Poſterities ſake to receive from his Majeſtie an Act of Oblivion, a generall Pardon, aſſurance for the Arrears of the Souldierie, and meet ſatisfaction for tender Conſciences.

DAVID IENKINS,

Iudge

Judge Jenkin's
Remonſtrance
TO THE
LORDS
AND
COMMONS
OF
The two Houſes of
PARLIAMENT, at
WESTMINSTER,
the 21th. of *February*, 1647.

By *DAVID JENKINS*,
Priſoner in *Newgate*.

Printed in the Yeare, 1648.

Judge Jenkin's
REMONSTRANCE
TO THE
LORDS and COMMONS
AT
WESTMINTER.

I Deſire that the Lords and Commons of the two Houſes, would be pleaſed to remember, and that all the good people of *England* do take notice of an Order of the Houſe of Commons this Seſſion, for publiſhing the Lord *Cook* his Bookes: which Order they may finde printed in the laſt Leafe of the ſecond part of his Inſtitutes, in theſe words: *viz.*

Die Mercurii 12. *May*, 1641.

UPon Debate this Day in the Commons Houſe of Parliament, the ſaid Houſe did then deſire, and held it fit, that the Heir of Sir *Edward Cook* ſhould publiſh in print the Commentary upon *Magna Charta*, *the Pleas of the Crown*, and *the juriſdiction of Courts*, according to the intention of the ſaid Sir *Edward Cook*; and *that none but the Heir* of the ſaid Sir *Edward Cook*, or he that ſhall be authorized by him, do preſume to *publiſh in print* any of the foreſaid Bookes, or any Copy thereof.

H. Elſynge Cler. Dom. Com.

And I do further deſire them that they would reade and peruſe M. *Solicitour Saint-John*, and M. *John Pym*, their Bookes, publiſhed likewiſe this Seſſion, whoſe Titles are as followeth, *viz.*

An

An Argument of Law, concerning the Bill of Attainder of High Treaſon of Thomas *Earle of* Strafford.

At a Conference in a Committee of both Houſes of Parliament.

By M. Saint-Iohn *His Majeſties Solicitour General.*

Publiſhed by Order of the Commons Houſe.

London, Printed by *G. M.* for *Fo. Barlet,* at the Signe of the Guilt Cup, near S. *Auſtins* Gate in *Pauls* Church-yard, 1641.

And the Speech or Declaration of Iohn Pym *Esquire,*

After the Recapitulation or ſummoning up of the Charge of High Treaſon, againſt Thomas *Earle of* Strafford, 12. April, 1641.

Publiſhed by the Order of the Commons Houſe.

LONDON,

Printed for *Iohn Bartlet*, 1641.

1. Nothing

1. NOthing is delivered for Law in my Books, but what the H. of Commons have avowed to be Law in Bookes of Law, publiſhed by their command this Seſſion, and agreeable to the Bookes of Law, and Statutes of this Realme, in all former Times and Ages.

2. The ſuppoſed offence charged on me is againſt the two Houſes, and none ought to be judges and parties, by the Law of this Land, in their own caſe.

3. I deſire the benefit of *Magna Charta*, *the Petition of right*, and other good Lawes of this Land, which ordain that *all mens Trials ſhould be by the eſtabliſhed Lawes, and not otherwiſe*: they are the very words of the Petition of Right.

An Ordinance of both Houſes is no Law of the Land, by their own confeſſion; and by the Bookes of the Lord *Cook*, *publiſhed by their Order, as aforeſaid*, this Seſſion in ſix ſeverall places.

1. Part. tol. of Ordinances, fol. 728: 2. Pars inſt. fol 47, 48. 157. 143. 4 par inſtit. 23, 232, 208. 4. H. 7. 18.

For *Sedition*, in my Bookes there is none, but ſuch as they have *authoriſed this Seſſion, to be publiſhed and printed*. To publiſh the Law is no ſedition. Theſe Poſitions following I do ſet down for the Law of the Land in my Bookes,

books, and they themſelves have juſtified, and avowed them as aforeſaid, we agree the Law to be, and to have been in all Times in all the particulars following, as here enſueth.

3 Part inſtit pag. 12. 1. *To impriſon the King is High Treaſon.*

M. Sollicitor Pag. 12. 3. part inſt. pag. 9. 2. *To remove Counſellours from the King by force is High Treaſon.*

M. Pym, p. 28 3 part inſtit. 3, 10, 12, 16. 3. *To alter the eſtabliſht Lawes in any part by force is High Treaſon.*

3 part inſtit. pag. 9. 4. *To uſurpe the Royall Power is High Treaſon.*

5. *To alter the Religion eſtabliſht is High Treaſon.*

M. Sollicitor p. 30, 31, 36. 6. *To raiſe rumours and give out words to alienate the peoples affections from the King, is High Treaſon.*

M. Sollicitor pag. 9. 7. *To ſeſſe Souldiers upon the people of the Kingdome, with-*

without their conſent, is High Treaſon.

8. *The execution of paper orders by Souldiers in a military way, is High Treaſon.* M. Solicitor pag 9.

9. *To counterfeit the great Seale, is High Treaſon.* M. Solicitor pap. 24. 4. part inſt. p. 125.

10. *The Commiſsion of Array, is in force, and none other.* Iuſtice Huttons argument, fol. 39, 40.

11. *None can make Iudges, Iuſtices, Sheriffes, &c. but the King: The King makes every Court.* 4 part inſtit.

12. *The great Seal belongs to the Kings cuſtody, or to whom he ſhal appoint, and none other.* 2 part inſtit. articul. ſuper chartas cap. 5.

13. *Ordinances of one or both Houſes are no lawes to binde the people.* 1 part, Coll. of Ordin. & Cook ut ſupra.

14. *No Priviledge of Parliament, holds for Treaſon, Felony,*

lony, or breach of the Peace, not for twenty Parliament men, forty, nor three hundred.

M. Solicitor pag. 8. 70. 15. *To ſubvert the fundamental Laws is High Treaſon.*

M. Solicitor pag. 12. 27. 16. *To levey warre againſt the perſon of the King, is High Treaſon.*

M. Solicitor pag 26. 17. *To perſwade Forreiners to levy warre within this Kingdome, is High Treaſon.*

M. Solicitor pag. 35. 18. *To impoſe unlawfull Taxes, to impoſe new Oaths, is High Treaſon.*

M. Pym, p. 3. 19. *The King can doe no wrong.*

M. Pym, p. 17. 20. *It is a pernicious Doctrine to teach Subjects, they may be diſcharged from the oath of Allegiance.* Then what means the Doctrine of both Houſes of the Votes 11 of *Feb.* 1647. 21. *A*

21. *A neceſsity of a mans owne making, doth not excuſe him.* The requiring and forcing of the Militia, brought the neceſſity of arming upon the Houſes. M. Pym, p. 24.

22. *None can levy war within this Realme without authority from the King, for to him only it belongeth to levy war, by the Common Law of the Land to do otherwiſe is High Treaſon, by the ſaid Common Law.* The onely quarrell was and is the *Militia*: for the which ſo much blood hath been ſpent, and Treaſure. 3. part inſt. pag. 9.

23. *No Parliament without the King, he is Principium, caput & finis.* M. Solicitor 70. 71. 4. part. inſt. pag. 1. 3. 4. 4. pars inſt. 41. 356.

24. *Preſentment or tryall by Jury, is the birth-right of the Subject.*

There

There is no doubt but that many in both Houſes are free from this *great ſin*, and that moſt of the prevailing party, had at firſt no intentions to proceed ſo farre; but the madneſſe of the People (who are very unſtable, and ſo they will finde them) and the ſucceſſe of their Armies (having this great rich City to ſupply them, with all accommodations) have ſo elated them, that the evil is come to this height.

For my ſelfe, to put me to death in this cauſe, is the greateſt honour I can poſſibly receive in this World: *Dulce & decorum eſt mori pro patriâ.* And for a Lawyer and a Judge of the Law, to die, *Dum ſanctis patriæ legibus obſequitur*; for obedience to the Lawes; will be deemed by the good men of this Time, a ſweet ſmelling ſacrifice; and by this, and future Times, that I died full of yeares, and had an honeſt and an honourable end: And poſterity will take knowledge of theſe Men, who put ſome to death for ſubverting of the Lawes, and others for ſupporting of them, *&c.*

Bracton. l. 3. c. 9. p. 107. 4. pars inſt. 341, 343. Stanford. 99.

Yet mercy is above all the Workes of God, *The King is Gods Vicar on earth.* In *Bracton*, who was a Judge in *Henry* 3. time, you ſhall finde the Kings Oath; *To ſhew mercy*, is part of it: You

You are all his children; ſay, and do what you will, you are all his Subjects, and *He is your King* and Parent: *Pro magno peccato paululum ſupplicii ſatis eſt patri*; and therefore let not the prevailing party be obdurate, out of a deſperation of ſafety: That which is paſt is not revocable: Take to your thoughts your parents, your wives, your children, your friends, your fortunes, your countrey; wherein Forreigners write there is *Mira aeris ſuavitas & rerum omnium abundantia:* Invite them not hither, the onely way to be free of their company will be, *To reſtore his Majeſty, and receive from Him an Act of Oblivion, a general Pardon, Aſſurance for the Arreares of the Souldiery, and meet ſatisfaction to tender conſciences.*

God preſerve the King and the Lawes.

DAVID JENKINS,
Priſoner in New-gate.

FINIS.